United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-7356

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN RE:

MASTER KEY ANTITRUST LITIGATION

EXXON CORPORATION, ESSO EASTERN, INC., EXXON PRODUCTION RESEARCH COMPANY, ESSO EXPLORATION, INC., ESSO INTER-AMERICA, INC., JAYVEN, INC., GILBARCO, INC., EXXON NUCLEAR COMPANY, INC., and EXXON RESEARCH & ENGINEERING COMPANY,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX - VOLUME I

WILLIAM SIMON
G. JOSEPH KING
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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

REFERENCE MUST BE MADE TO THE INDIVIDUAL DOCKET SHEET FOR ENTRIES FOR ENTRIES RELATING ONLY TO INDIVIDUAL ACTIONS.

DOCKET NO.

Jury demand date:

D. C. Form No. 106 Rev.

1

TITLE OF CASE	ATTORNEYS
IN RE: MASTER KEY ANTITRUST LITIGATION	For plaintiff:
	BEST COPY AVAILABLE
	For defendant:
	Ilco - Charles Donelan 340 Main St., Worcester
OR SARGENT - William H. Prout, Jr. 205 Church St., New Haven, Conn.	Sargent - John W. Barnett
	Sargent - Shaun E. Sullivan 205 Church St., New Have
	Ilco - Richard G. Schneider Dechert Price & Rhoads 3400 Centre Square West 1500 Market St. Philadelphia, Penna 19102

STATISTICAL RECORD	COSTS			DATE	NAME OF RECEIPT NO.	REC.	
J.S. 5 mailed	Clerk						
J.S. 6 mailed	Marshal						
Basis of Action: MULTI-DISTRICT LITIGATION	Docket fee						
	Witness fees						
Action arose at:	Depositions						

1

DATE	PROCEEDINGS	Date Order Judgment
1971		
1/18	(1) Consent of Transferee Court to assignment of Actions (Civil Nos. 14231, 14232, 14233, 14234, 14235 and 14236) to the Honorable H. Joseph Blumenfeld for coordinated or consolidated pre-trial proceedings pursuant to 28 U.S.C. §1407, entered Timbers, J.	
1/21	(2) Opinion and Order of the Judicial Panel on Multidistrict Litigation, entered.	
1/22	Certified copies of Opinion and Order of the Judicial Panel on Multidistrict Litigation together with transmittal letters mailed to John J. Harding, Clerk, U. S. District Court, Eastern District of Pennsylvania, Philadelphia, Pennsylvania 19107; Joseph I. Bogart, Clerk, U. S. District Court, Southern District of Florida, Miami, Florida 33101; and John Livingston, Clerk, U. S. District Court, Southern District of New York, Foley Square, N. Y., N. Y. 10007. Copies of transmittal letters mailed to Miss Patricia Howard, Clerk, Judicial Panel on Multidistrict Litigation.	
1/26	Original Papers re Civil Action No. 14235, THE CITY OF NEW YORK, et als v. EMHART CORPORATION, et als; and Civil Action No. 14236, THE STATE OF NEW YORK v. EMHART CORPORATION, et als, received from Clerk, Southern District of New York.	
1/28	Original papers re Civil Action No. 14233, CITY OF PHILADELPHIA v. EMHART CORPORATION, et als; and Civil Action No. 14234, AMHERST LEASING CORPORATION v. EMHART CORPORATION, et als, received from Clerk, Clerk, Eastern District of Pennsylvania.	
1/29	Original Papers re Civil Action No. 14231, STATE OF FLORIDA v. EMHART CORPORATION, et als; and Civil Action No. 14232, PREMAR CONSTRUCTION CORPORATION, et als v. EMHART CORPORATION, et als, received from Clerk, Southern District of Florida.	
2/4	(3) Practice and Procedure Order Upon Transfer Pursuant to 28 U.S.C. § 1407(a), entered Blumenfeld, J. Copies mailed to all counsel and to Clerk, Judicial Panel on Multidistrict Litigation.	
"	(4) Memorandum to Counsel issued. Earl, C. Copies mailed to all counsel and to Clerk, Judicial Panel on Multidistrict Litigation.	
2/9	Court Reporter's Transcript of Proceedings of February 1, 1971 (Preliminary discussion with Court and counsel) filed. Collard, R.	
2/10	(5) Answers to Interrogatories filed by Atty. Palmer McGee in Civ. 14,233 and Civ. 14,234	
3/	Copy of Original Order of Judge Blumenfeld, dtd. 2/3/71 sent Atty. Beckman and Yakowicz - airmail spec. del.	
4/6	(6) Certified Copy of Civil Action No. 35996, STURDY HOMES CO., etal v. EATON, YALE & TOWNE, INC. etal received from Clerk, Eastern District of Michigan [illegible]	
3/30	Transcript of Pre-Trial Conference filed at New Haven (Collard, R.)	
4/16	(7) Protective Order governing documents and other materials (Blumenfeld, J.) Copy sent Panel Clerk	
	(8) Pre-Trial Order No. 1 (Blumenfeld, J.) Copy sent Panel Clerk	
5/17	(9) Plaintiffs' Motion under Rule 37 for Sanctions and to Compel Further Answers by Defendants Emhart Corp. and Eaton, Yale & Towne, Inc. to Plaintiffs' Interrogatories - First Set. filed	
	(10) Memorandum of Plaintiffs in Support of Motion for Sanctions and to Compel Further Answers by Emhart Corp. and Eaton, Yale & Towne, Inc. to Plaintiffs' Interrogatories - First Set. Filed.	
5/27/71	Court Reporters Notes of Hearing 2/1/71 filed. (Collard, R.)	
5/27/71	(11) Answers of Defendant Emhart Corp. filed.	
5/13/71	Original papers re State of Ohio vs. Eaton Yale & Towne, Inc. etal	

DATE 1971	PROCEEDINGS
6/22/71	(11) Memorandum of Def. Embart in Opposition to Plaintiff's Motion under Rule 37 for Sanctions and to compel Further Answers by Def. Embart and Eaton, Yale & Towne, Inc. to Plaintiff's Interrogatories -- First Set -- filed.
	(11a) Exhibit A - filed.
	(12) Affidavit of Wm. C. Linchtenfels on behalf of Def. Embart filed
6/7/71	(13) Brief of Eaton in Response to Plaintiffs' Motion for Order compelling Discovery under Rule 37 filed.
	(14) Def. Eaton Corp. Amended and Supplemental answer to Plaintiffs' Interrogatories filed (City of Phila & Amherst Leasing)
6/17/71	Transcript of hearing on 6/7/71 filed with Judge Blumenfeld
6/22/71	(15) Ruling on Plaintiffs" Motion under Rule 37 for Sanctions and to compel further answers by Def. Embart Corp. and Eaton Yale & Towne, Inc. to Plaintiffs' Interrogatories - First set filed (Blumenfeld, J.) (M 6/22/72)
7/1/71	(16) Stipulation between Liaison Counsel for Plaintiffs and Defendants.
7/7/71	(17) Order on above stipulation (Blumenfeld, J.)(M 7/8/71)
7/29/71	Original papers re Civil Action No. T-4985 THE STATE OF KANSAS v. EATON YALE & TOWNE, INC. EMHART CORPORATION, ILCO [illegible] AND SARGENT & COMPANY (14,548) received from Clerk, District of Kansas
8/5/71	(18) Affidavit of Lee A. Freeman, Jr. re Expenses filed.
8/5/71	(19) Affidavit of H. Laddie Montague, Jr. re Expenses filed.
8/24/71	(20) Report on Discovery of Plaintiffs filed.
	(21) Plaintiffs' Supplemental Interrogatories to Defendants filed
9/3/71	(22) Further Answers on Behalf of Def. Embart to Plts. Interrogatories First Set with Exhibits A to K filed.
10/26/71	(23) Notice of Subpoena Duces Tecem filed.
10/27/71	(24) Notice of Subpoena Duces Tecum filed
10/28/71	(25) Stipulation that time Def. may answer Plts Supplemental Interrogatories be extended to 11/30/71 and order thereond filed.' (Blumenfeld, J.) (M 11/4/71) Copies to all Liaison Counsel.
11/30/71	(26) Notice of Subpoena Duces Tecum filed.
11/30/71	(27) Answers on Behalf of Def. Sargent & Co. to Plaintiffs' Supplemental Interrogatories filed.
12/1/71	(28) Answers on behalf of Def. Embart to Plaintiffs Supplemental Interrogatories with Exhibits L thru R filed.
12/6/71	(29) Answers on behalf of Def. Ilco to Plaintiff's Supplemental Interrogatories to Defendants.
1/3/72	(30) Answers on behalf of Def. Eaton Corp. to Plts. Supplemental Interrogatories to Def. filed.
1/4/72	(31) Notice of Subpoena Duces Tecum filed.
1/13/72	(32) Notice of Subpoena to Gardner Hardware Co. filed.'
2/10/72	(33) Appearance of Edward B. Bergman for City of Phila filed.
2/10/72	(34) Order re: taking of depositions of McCulloch etal (Blumenfeld, J.) (M 7/24/72)
2/21/72	(35) Notice of taking deposition of Robert N. Hicks, Jr. filed
2/25/72	(36) Marshals return of Dpositon Subpoena showing removal of Thos. B. O'Neill
2/12/72	(37) Marshal's return showing service on Geddes Larsons for deposition.
	(38) Marshal's return showing service on A. E. Gray, Jr. for deposition.

DATE 1972	PROCEEDINGS	D Jud
9/13/72	(39) Marshal's return showing service on L. J. Pantas for Deposition.	
9/27/72	(40) Marshal's return showing service on L. C. Booth for Deposition.	
10/6/72	(41) Request for Admissions of Facts with respect to Documents filed.	
10/16/72	(42) Letter from Atty. John W. Barnett stating that he will accept service on behalf of Sargent & Co. in case of State of Illinois and similar letters from Atty. R. Reynolds on behalf of Emhart and Atty. Donelan on behalf of Ilco. Corp.	
10/17/72	(43) Notice of Second Pre-Trial conference (Blumenfeld J. (M 10/31/7	
10/30/72	(44) Motion to Compel Testimony of Edward H. McCulloch filed	
	(45) Memorandum in support of Motion to Compel Testimony of Edward H. McCulloch filed.	
11/7/72	(46) Notice of Depositions filed by Atty. Freeman	
11/7/72	(47) Motion to Compel Interrogatory Answers from Defendant Sargent & Co. filed by Plaintiffs.	
11/7/72	(48) Motion to Compel Interrogatory Answers from Defendant Ilco Corp. filed by Plaintiffs.	
	(49) Response of Def. Sargent & Co. to Plaintiffs Request for Admissions of facts with respect to documents dated 10/4/72 filed.	
	(50) Response of Def. Emhart Corp. to Plaintiffs' Request for Admissions of Facts with respect to documents dated 10/4/72 filed	
11/8/71	(51) Response of Def. Ilco Corp. to Plaintiffs request for Admissions of Facts with Respect to Documents dated 10/4/72 filed.	
11/9/72	(52) Response of Def. Eaton Corp. to Plaintiffs Request for Admissions of Facts filed	
11/10/72	(53) Appearance of Shaun S. Sullivan filed for Def. Sargent	
	(54) Motion to Strike with Memorandum and Notice filed by Def. Sargent.	
11/13/72	(55) Motion to Compel Interrogatory Answers from Def. Emhart Corp. filed by Plaintiffs.	
	(55a) Appendix to above motion filed.	
	(56) Objection and Motion to Strike of Def. Ilco. Corp. Directed to Plaintiffs Motion to Compel Interrogatory Answers from Def. Ilco Co. filed.	
11/14/72	(57) Motion for Appt. of a Special Master to Supervise Depositions filed by Plaintiffs	
11/16/72	(58) Motion to Strike of Def. Emhart Corp. directed to Plaintiffs Motion to Compel Interrogatory answers from Def. Emhart Corp. with Memorandum in Support filed.	
11/16/72	(59) Motion to Strike of Def. Emhart Corp. directed to Plaintiffs Motion for Appointment of a Special Master to Supervise Depositions with Memorandum in Support filed.	
11/20/72	(60) Motion to Strike of Defendant Ilco Corporation Directed to Plaintiffs' Motion for Appointment of a Special Master to Supervise Depositions and Notice of Motion filed	
11/27/72	(61) Memorandum in Support of Motions to Compel Interrogatory Answers filed	
11/27/72	(62) Response to the Motions to Strike Plaintiffs' Motion for Appointment of Special Master to Supervise Depositions and to Compel Interrogatory Answers filed.	
11/27/72	(63) Memorandum on Behalf of All Defendants in Opposition to Plaintiffs Motion to Compel Testimony of Edward H. McCulloch filed	
11/30/72	Hearing on Various Motions	

DATE	PROCEEDINGS
2/4/72	(64) Order obviating need for formal ruling on any of the motions at this time and setting Feb. 26, 1973 at 2:00 p.m. for another pre-trial hearing to establish a definite trial date (Blumenfeld, J.) (M-12/4/72)
2/7/72	Transcript of hearing on 11/30/72 filed (Collard, R.)
2/20/72	(65) Notice of Depositions
1/8/73	(66) Notice of Depositions
1/16/73	(67) Class action order filed (for signature of MJB)
	(68) Plaintiffs' Memorandum in Support of all Class Actions
1/17/73	(69) Court reporter's notes filed (Collard)
1/23/73	(70) Deposition of L. Curtis Booth filed
1/24/73	(71) First set of Consolidated Interrogatories to all Plaintiffs by Defendants
1/29/73	(72) Notice of Depositions
2/7/73	(73) Notice of Deposition
2/15/73	(74) Separate Memorandum of Def. Emhart Corp. regarding Distribution of Builder's Hardware
	(75) Deposition of Leo J. Pantas
	(76) Memorandum of Sargent & Co. in Opposition to Certification of Classes
2/16/73	(77) Motion of All Defendants for Summary Judgment
2/16/73	(78) Notice of Hearing on Summary Judgment 2/26/73
2/16/73	(79) Statement of Facts of Def. Eaton Corp.
2/20/72	(80) Notice of Depositions
2/21/73	(81) Statement of facts of Def. Ilco Corp.
3/2/73	(82) Notice of Depositions
3/13/73	(83) Deposition of Edward H. McCulloch
3/19/73	(84) Notice of Subpoena Duces Tecum to Leibman, Williams, Bennett, Baird & Minow
3/19/73	(85) Amended notice of Depositions
3/20/73	(86) Transcript of hearing before Judge Blumenfeld on 2/26/73
3/26/73	(87) Deposition of Roy G. Salaman
4/10/73	(88) Notice of Deposition of David Oaks
4/23/73	(89) Deposition of RM. Thompson with exhibits
	(90) Plt's Memo in Opposition to Defts' Motion for Summary Judgment
	(91) Affidavits in Support of Pltfs' Memo as above
	(92) Obj. to Notice of Dep. and Motion for Protective Order
	(93) Pltf's Answers to Deft's first set of consolidated Interrogatories
	(94 and 94a) Motion for Leave of Coutt to File Memo as Amicus Curiae and Memorandum
	(95) Certificate of Service for following Plaintiff's Answers to Defendants Interrogatories
	(96) City of Philadelphia
	(97) Argentine Leasing Co.
	(98) Shalimar Leasing Co.
	(99) Auburn Leasing Corp.
	(100) Tulane Leasing Corp.
	(101) Amherst Leasing Corp.
	(102) Annapolis Leasing Corp.
	(103) Atlantis Leasing Corp.
	(104) Brazilia Leasing Corp.
	(105) Brisbane Leasing Corp.
	(106) Bucknell Leasing Corp.

DATE 1973	PROCEEDINGS	Da Judi
4/23/73	(107) Cambridge Leasing Corp.	
	(108) Georgetown Leasing Corp.	
	(109) Greenwich Leasing Corp.	
	(110) Hampton Leasing Corp.	
	(111) Harvard Leasing Corp.	
	(112) Copehagen Leasing Corp.	
	(113) Colombia Leasing Cor	
	(114) Citadel Leasing Corp.	
	(115) Ceylon Leasing Co.	
	(116) Canada Leasing Corp.	
	(117) Imperial Leasing Corp.	
	(118) Martinique Leasing Corp.	
	(119) Mandalay Leasing Corp.	
	(120) London Leasing Corp.	
	(121) LaFrance Leasing Corp.	
	(122) Rome Leasing Corp.	
	(123) Purdue Leasing Corp.	
	(124) Panama Leasing Corp.	
	(125) Oxford Leasing Corp.	
	(126) Uass Leasing Corp.	
	(127) Wellington Leasing Co.	
	(128) West Point Leasing Corp.	
	(129) Westport Leasing Corp.	
	(130) Notre Dame Leasing Corp.	
	(131) Yaille Leasing Corp.	
	(132) Northwestern Leasing Corp.	
	(133) Mexico Leasing Corp.	
	(134) Nautilus Leasing Corp.	
	(135) Montclair Leasing Corp.	
	(136) Montauk Leasing Corp.	
	(137) Melbourne Leasing Corp.	
	(138) Pennsylvania Leasing Corp.	
	(139) Peru Leasing Company	
	(140) Singapore Leasing Company	
	(141) Sydney Leasing Co.	
	(142) Syracuse Lea ing Corp.	
4/25	(143) Answers by Plaintiff State of Ohio to Def. Interr. 1st Set	
4/26	(144) Ans of West Va. to Def. 1st set of Interr.	
	(145) Ans. of Illinois to Def. 1st set of Interr.	
	(146) Ans of Penna. to Def. 1st set of Interr.	
	(147) Ans. of Indiana to Def. 1st set of Interr.	
	(148) Notice of filing	
	(149) Memo of City of N.Y in Opposition to Def. Motion for Summary Judgment	
4/27	(150) Ans. of W. Va. to Def's 1st set of Interr.	
	(151) Ans. of Ill. to Def. 1st set of Interr.	
	(152) Ans. of Penna. to Def. 1st set of Interr.	
	(153) Ans. of Indiana to Def. 1st set of Interr.	
4/30	(154) Deposition of David R. Oaks	
5/3	(155) Notice of change of address of Lee Freeman, filed.	
5/4	(156) Deposition of Wm C. Maher, taken on 1/24/73, filed;	
5/9	(157) Supplemental Memorandum in Opposition to Defendants' joint motion for summary Judgment.	
5/9	(158) Deposition of William J. Healy.	
5/14	(159) Plaintiff, St. of New Jersey, Memorandum of Law in opposition to Defendants' Motion for Summary Judgment.	

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JS 110 Rev. Civil Docket Continuation

DATE 1973	PROCEEDINGS	Date Judgm
5/17/73	(160) Answers of Kansas to Def. 1st set of Interr.	
5/25/73	(161) Order extending time until 6/4/73 for briefs - copies to Attys. Freeman, Dates, Donelan, Dixon and Barnett	
	(162) Supplemental Memo of the State of Ohio in Opposition to Def. Motion for Summary Judgment	
/29/73	(163) Deposition of Wm. Lichtenfelds	
	(164) Deposition of Alfred M. Gray, Jr.	
/4/73	(165) Defendants' Reply Memo in support of Joint Motion for Summary Judgment SEE 165 a	
5/6/73	(166) Notice of Hearing on Def's Motion for Summary Judgment	
6/4/73	(165a) Affidavit of Kenneth Froberg	
6/6/73	(167-167a-167b) Deposition of Wm. C. Hettling with letters of correction A & B	
5/8/73	(168) Depositions of George H. Rhynedance, Bauman & Materne all w/e	
5/13/73	(169) Appearance of Elias Abelson, Deputy Atty Gen. 196 W. State St., Trenton, New Jersey 08608)	
6/13/73	(170) Brief in Illinois vs. Edward H. McCulloch	
6/21/73	(171) Answers of the State of Florida to Interrogatories of Defendants with Cert. of Serv.	
6/26/73	(172) Deposition of Donald S. Wright	
6/26/73	Hearing on Defendant's Motion for Summary Judgment (Dec. Reserved)	
7/2/73	(173) State of New Jersey Answers to Def's Consolidated Interrogatories	
8/1/73	(174) Transcript of Hearing on 6/26/73 filed by P. Collard	
8/2/73	(175) Court Reporter's Notes filed	
8/13/73	(176) Deposition of Eugene F. Deady filed	
8/23/73	(177) Ruling on Motion for Summary Judgment (m Copies to all counsel of record	
/29/73	(178) Motion to Amend Order to Include Certificate	
/11/73	(179) Def. Memo in support of Joint Motion to Amend Order to Include Certificate Pursuant to 28 USC 1292(b)	
9/13/73	(180) Opposition to Defendants request for certification under Section 1292(b)	
/19/73	(181) Deposition of Samuel S. Crissman	
	(182) Deposition of George E. Wheatley	
9/20/73	(183) Ruling on Motion to Amend Order, Blumenfeld, J. (M 9/21/	
9/27/73	(184) Deposition of Elihu Yale	
/27/73	(185) Deposition of Geddes Parsons	
9/27/73	(186) Deposition of Thomas B. O'Neill	
10/4/73	(187) Notice of Depositions (McHugh-Sollitt-Luedeking-Foley)	
/26/73	(172a) Excerpts from Deposition Testimony of Robert H. Hitt	
10/18/73	(188) Marshal's return showing service on Richard Foley	
10/19/73	(189) Notice of Deposition of A. Scavo	
10/29/73	(190) Notice of Deposition of Lerman Const., Hosp. Development and Miami Merchandise Mart	
10/29/73	(191) Notice of Deposition of City of Philadelphia	
11/28/73	(192) Notice of Deposition of Berman and Miami International	
12/ /73	(193) Notice of Deposition of Samuel Lefrak	
12/ /73	(194) Marshal's return showing service on Richard Foley	
12/ /73	(195) Motion and Notice for Leave to Amend Complaint	
12/ /73	(196) Proposed Amended Complaint (Amended Complaint filed 1/4/74)	

DATE 1973	PROCEEDINGS	D Ju
12/6/73	(195) Defendants" First Request for Product on of Documents	
12/6/73	(196) Deposition of Richard H. Foley	
12/6/73	(197) Plaintiff's Supplemental Answers to Defendant's First set of Consolidated Interrogatories	
12/7/73	(198) Second Set of Consolidated Interrogatories to All Plaintiffs all Defendants	
12/10/73	(199) Notice of Depositions	
12/10/73	(200) Supplemental Answer of Illinois to Defendant's first set of Interrogatories	
12/10/73	(201) Supplemental Answers of West Virginia to Defendant's first set of Interrogatories	
12/10/73	(202) Supplemental Answers of Penna. to Defendants first set of Interrogatories.	
12/10/73	(203) Supplemental Ansers of Indiana to Defendants First set of Interrogatories.	
12/12/73	(204) Supplemental Answers by Plaintiff State of Ohio to Defendants' Interrogatories - First set	
	(205) Deposition of L. F. Quedenfeld filed. (Collard E.) Exhibits 1-33.	
12/21	(206) Motion pursuant to Rule 37(D)	
1/7/74	(207) Motion for Document Preservation Order	
1/14/74	(208) Notice of Deposition of Harry Talgo	
1/21/74	(209) Brief in Opposition to Motion for Document preservation Order	
1/24/74	(210) Deposition of Chester R. Kazmer	
1/30/74	(211) Transcript of hearing on 1/7/74 on Plaintiff Bermar's Motion for Voluntary Dismissal and Plaintiff Amherst's Motion for Protective Order vacating Defendants' Notice of Depositions of Samuel J. Lefrak	
2/4/74	(212) Answers of the State of California to Defendants' First set of Interrogatories	
2/7/74	(213) Plaintiffs Statement of Position and Memorandum of Objection to Defendants Second set of Consolidated Interrogatories	
	(214) Plaintiffs Response to Defendants Request for Documents	
2/25/74	(215) Reply Memorandum in Support of Motion for Document Production Order	
3/8/74	(?16) Reply Brief of Defendant Eaton Corp. opposing Plaintiff: Motion for a document Preservation Order	
3/29/74	(?17) Notice of Deposition to Louis Carr	
3/20/74	Court Reporter's Notes of Proceedings held on January 7, 1974, filed in Hartford. (Collard, R.)	
3/29/74	(?18) Defendant's Motion Pursuant To Rule 37(a) with notice	
	(219) Memo of Defendants in Support of Motions to Compel Ansers of Plaintiffs to Defendants" Second Set of Consolidated Interrogatories	
4/8/74	(220) Supplemental Memorandum in Support of Plaintiff's Motion for Document Preservation Order and other relief.	
4/12/74	(221) Answers of State of Florida to Interrogatories 14 and	
4/19/74	(222) Deposition of Anthony Scavo	
4/24/74	(223) Joint Opposition to Defendants' Rule 37(a) Motion	
4/25/74	(224) Suggestions Regarding Procedures for Trial	
4/25/74	(225) Summary of Evidence with Respect to Defendants' Conspiracy to Eliminate Competition and Raise Proces for contract hardware on masterkey jobs	
5/7/74	(226) Notice of Depositinn and Request for Production of Documents	

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C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date O Judgme
1974		
/9/74	(227) Notice of Subpoena Duces Tecum	
16/74	(228) Reply Memo of Defendants in Support of Motions to Compel Answers by Plaintiffs to Defendants Second set of Consolidated Interrogatories	
5/24/74	(229) Subpoena and schedule of documents	
5/7/74	(230)a-e Transcript of Deposition of Harry Talgo filed in six Vol- numbered 230a-230f)	
/10/74	(231) Notice of Subpoenae Duces Tecum	
/14/74	(230f) Exhibits marked at depostion of Harry Talgo	
6/14/74	(232) Deposition of Sumner Marshall Sollitt	
7/10/74	(233) Notice of Subpoena Duces Tecum	
7/24/74	(234) Deposition of Robert C. Belfi	
7/31/74	(235) Notice of Subpoena Duces Tecum	
7/31/74	(236) Deposition of Glenn E. Wiley	
8/5/74	(237) Affidavit of Service other than by U. S. Marshal and copy of Subpoena to Wherry Hardware Co Inc.	
	(238) Affidavit of Service other than by U. S. Marshal and copy of Subpoena to Adolph Soeffing & Co. Inc.	
/12/74	(239) Notice of change of address of Frederic Burns	
	Motions pursuant to Rule 37 (a)(d) & Motion for Document Preservation Order over to date to be assigned by Court.	
9/18/74	(240) Motion for Separation of Liability and Damage Issues for Trial.	
9/30/74	Hearing on Motion Pursuant to Rule 37(a), Motion pursuant to Rule 37(d) and Motion for Document Preservation Order Memoranda by Parties by 11/15/and 12/1. Parties to submit proposed Order re Zerman Const(costs, etc) for consideration by Court Parties to confer and agree re document preservation	
/25/74	(241) Supplemental Memorandum in Support of Objections to Defendants' Second Set of Interrogatories.	
/7/74	(242) Transcrip filed by Paul Collard	
/6/74	DOCUMENT NO. 206 MOTION PURSUANT TO RULE 37(d) Denied, Blumenfeld, J. (M 11/7/74)	
	DOCUMENT NO. 218 Def's MOTION PURSUANT TO RULE 37(a) Motion denied. Any unresolved issues relating to discovery which remain after all efforts by counsel to resolve them will be considered at a pre-trial conference if then still timely (Blumenfeld, J.) (M 11/7/74)	
	COPIES OF THE ABOVE TO ALL COUNSEL OF RECORD	
	[illegible]	
11/11/74	(243) Defendant's Motion for Ext. of Time to Respond to Plts Motion for Separation of Liability and damage issues for trial and order thereon granting same (Blumenfeld, J.) (M 11/13/74) Copy to ATtys Dixon and Freeman	
11/21/74	(244) Memorandum in Support of Motion to Separate Liability and Damage issues	
12/7/74	(245) Pltf's Memo of Law with Respect to nature and proof of th Antitrust violations committed by Def's.	
12/9/74	(246) Pltfs Designation of Evidence with respect to trial of Liability issues.	
/13/74	(247) Notice of Subpoena DT Central Indiana Hdwe Co.	
	(248) Notice of Subpoena DT Lind Hdwe Co.	
	(249) Notice of Subpoena DT Circle Hardware Co.	
	(250) Notice of Subpoena DT Stauber Hdwe	

DATE	PROCEEDINGS
1/3/75	(251) Defendants' Motion for Denial of Class Certification
	(252) Defendants" Memorandum in Support of their Motion for Denial of Class Certification.
	(253) Defendants" Memorandum in Opposition to Plaintiff's Rule 42 Motion
	(254) Memorandum of Defendants Sargent & Co. and Emhart Corp. Concerning Procedure for Trial.
1/10/75	(255) Separate Class Action and Trial Proposal of Def. Eaton Corp. and Ilco Corp.
1/22/75	(256) Reply Memorandum in Support of Motion to Separate Liabili and Damage issues
	(257) Motion for Consolidation of Pending Cases and Separation of Liability and damage issues for trial
	(258) Plaintiffs Memorandum in Support of the State-wide class actions.
1/27/75	(259) Plaintiffs Memorandum in support of the Nationwide Class Actions
1/27/75	Hearing on Defendants' Motion for Denial of Class Certification and Motion to Separate Liability and Damage Issues - Decision Reserved (Blumenfeld, J.) Proposed Order of Notice to Members of Class to be submitted by Mr. Freeman and Mr. Montague for consideratio by the court.
2/3/75	(260) Defendants Memorandum on Impact and Trial Issues
2/5/75	(261) Transcript of Hearing held on 1/27/75. Collard, R.
2/7/75	(262) Answers of the State of Conn. to Defendants" First Set of Interrogatories
2/15/75	(263) Defendants Request for Production of Documents with Respect to Plaintiffs Expert Witnesses
	(264) Defendants Interrogatories to All Plaintiffs as to the Allegation of Horizontal Price-fixing Conspiracy
	(265) Defendants expert witness interrogatories to all Plaintif.
2/18/75	(266) Notice of Deposition
3/7/75	(267) Notice of Deposition
4/8/75	(268) Defendants Consolidated Interrogatories to all Plaintiffs as to injury
4/25/75	(269) Reporter's notes filed - P. Collard
5/9/75	(270) Objections to Def. consolidated interrogatories to all Plaintiffs as to injury
5/13/75	(271) Motion for Approval of Proposed Class Action Notice in State-Wide Class Actions filed by Plaintiffs
5/15/75	(272) Notice of Depositions
5/23/75	(273) Answers to Def's Interrogatories to all Pltfs as to the Allegation of Horizontal Price-fixing Conspiracy
5/28/75	(274) Ruling on Pending Motions (Blumenfeld, J.) M 5/28/75 Copies to Liaison counsel
6/2/75	(275) Plaintiff's Consolidated Interrogatories to the Eaton Corp with respect to damages
	(276) Plaintiffs second set of Consolidated interrogatores to Sargent & Co.
	(277) Notice of Subpoenae Duces Tecum
6/3/75	(278) Supplemental Answers to Def's Interr. to all Pltfs as to the allegation of Horizontal Price-fixing conspiracy
6/4/75	(279) Motion to Produce Documents Addressed to Emhart Corp.
	(280) Motion to Produce Documents addressed to Eaton Corp.
	(281) Pltf's 2nd Set of Consolidated Interrogatories to Ilco

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DATE 1975	PROCEEDINGS	Date Judgme
5/28/75	(282) Notice of Compliance	
	(283) Notice of Depositions	
	(284) Defendants Motion to Compel Answers	
6/13/75	(285) Plaintiffs 2nd set of consolidated Interrogatories to Emhart Corp. (Russwin Div)	
	(286) Plaintiffs 2nd set of Consolidated Interrogatories to Emhart Corp. (P & F Corbin Div.	
/16/75	(287) Notice of Change of address for Counsel for State of N.J.	
	(288) Answers to 'Def's Expert Witness Interrogatories to all Plaintiffs and Notice of Filing.	
6/25/75	(289) Motion to Amend Order to Include Certificate Pursuant to 28 USW §1292 (b)	
"	(290) Defendants Memorandum in Support of Joint Motion to Amend Order to Include Certificate Pursuant to 28 USC §1292 (b).	
	(291) Notice of Appeal filed by 4 defs. Copies mailed to counsel, New Haven [illegible] U.S. Court of Appeals with copies of docket entries. C & D Forms mailed to Atty Barnett.	
	(292) Personal Bond on Appeal Secured by Cash Deposit ($250.00 check deposited into the Registry on 6/25/75)	
/30	(293) Withdrawal of Request for Certification Re:Emhart Corp.	
"	(294) Withdrawal of Appeal Re: def. Emhart Corp. Copy mailed to U.S. Ct of Appeals	
7-7	(295) Plaintiff's Reply Opposing 1292(b) Certification	
/-8	(296) Defendants' Memorandum on Notice to the Class Members.	
7-7	(297) Opposition to the Non-Settling Defendants' Request for Certification Under Section 1292(b).	
"	(298) Memorandum in Support of the Form of Class Action Notice Submitted by Plaintiffs	
7-11	(299) National Class Plaintiffs' Memorandum Contra The Inclusion of A Proof of Claim Form with the Initial Class Action Notice.	
7-10	(300) Defendants Reply Memorandum in Support of Joint Motion to Amend Order to Include Certificate Pursuant to 28 US.C. §1292 (b).	
[illegible]	[illegible]	
7/21/75	(301) Notice of Depositions	
	(302) Reply Memorandum in Support of Defendant's Form of Notice of Pendency to the Class Members	
/21/75	(303) Plaintiffs Class Action--Notice Interrogatories-to-Defendants	
/75	(304) Notice of Subpoenas Duces Tecum	
/75	(305) Deposition of Richard A. Cure	
1/75	(306) Amended Notice of Subpoenas Duces Tecum	
5/75	(307) Motion to Approve Escrow Agreement filed Motion approved 8/5/75 (Blumenfeld, J.) M 8/8/75 Copies to Liaison Counsel	
5/75	(308) Notice of Depositions	
/11/75	(309) Def's. Memo in Opposition to Proposed Settlemenet Notice [illegible]	
	(310) Motion to Produce Documents Addressed to Eaton, Yale & Towne, In	
	(311) Ruling on Motion for Certification of Interlocutory Appeal. (Blumenfeld, J.) (M 8/12/75) Copies to Attys.Dixon, Freeman, Barnett and Montague	
/13/75	(312) Request for Documents with respect to Tabulations of Hardware Directed to all plaintiffs by all defendants.	
/15/75	(313) Plaintiffs Reply to Def's Memo in Opposition to Proposed Notices of Class Actions and Settlement	
	[illegible]	

DATE 1975	PROCEEDINGS	Da Jud.
8/18/75	(314) Designation of Mailing Lists for Notices in State-Wide and National Class Actions on Behalf of Public Entities.	
	(315) Amended Notice of Depositions - Street, Haverkampf, Morris and King	
8/15/75	(316) Specification of Corporate Representative.	
8/18/75	(317) Deposition of John R. Meagley	
8/19/75	(318) Def's Motion for Order Appt. William H. Prout, Jr. to Transmit Record on Appeal and Order (MJB, J.)(8/19/75) Copies to Attys. Freeman and Dixon	
8/21/75	(319) Deposition of Gary G. Gould	
	(320) Motion to Dismiss Action of Sturdy Homes Co. pursuant to Rules 37 and 41	
8/25/75	(321) Plaintiffs Interrogatories with Respect to Witnesses and Documents that Defendants intend to present at Trial(Eaton Corp.)	
	(322) Plaintiffs Interrogatories with Respect to Witnesses and Documents that Defendants intend to present at Trial(Ilco Corp)	
	(323) Plaintiffs Interrogatories with Respect to Witnesses and Documents that Defendants intend to present at Trial(Sargent & Col)	
	(324) Memorandum in Support of Motions to File Amended Complaints	
	(325) Notice of Depositin and Subpoena Duces Tecum	
	(326) Documents to be produced pursuant to the Foregoing Notice of Depositeon and Subpoena Duces Tecum	
8/25/75	(327) Index to Record on Appeal filed. (Dup filed on 8/27 with lett	Co
8/27/75	(328) Motion for Protective Order	
*	(329) Protective Order (Blumenfeld, J.) Copy to Attys. Freeman and Dixon	
8/28/75	(330) Defendants' Supplemental Memorandum Re: Class Notice and Class Designation.	
9/2/75	(331) Request for Documents with Respect to Tabulations of Hardwar Directed to all Plaintiffs by All Defendants.	
	(332) Motion for Reconsideration of Defendants Motion for Certific of Interlocutory Appeal	
	(333) Response to Request for Documents with Respect to Tabulations of Hardware Directed to all Plaintiffs by All Defendants	
9/9/75	[illegible]	
8/29/75	(334) Designation of Mailing Lists for Class Action Notice	
9/4/75	(335) Deposition of Tony Roach	
9/4/75	Motion #332 Denied (Blumenfeld, J.) Copies to Attys. Freeman, Dixon, Bates, Barnett, Donelon	
9/4/75	(336) Deposition of JNO. Worner, Jr.	
9/5/75	(337) Deposition of Fred Hollfelder	
9/17/75	(338) Response to Request for Documents with Respect to Tabulations of Hardware Directed to All Plaintiffs by all Defendants	
9/18/75	(339) Motion to Compel Eaton Corp. to give Plaintiffs its list of Master Key Projects	
	(340) Defendants' Motion to Compel Discovery	
9/19/75	(341) Memorandum in Opposition to Plaintiffs Motions to Amend Complaints and Request for Oral Hearing	
9/[illegible]	(342) Response of the City of New York to Request for Documents with Respect to Tabulations of Hardware Directed to all Plainfiffs by all Defendants	
9/24/75	(343) Deposition of Charles Stacy, Jr.	
	(344) Pltfd. Interrogatories to Def. Sargent & Co. with regard to Liability - Third Set 12	

Docket Continuation

DATE 975	PROCEEDINGS	Dc Judgmt
24/75	(345) Pltfs. Interrogatories to Def. Eaton Corp. with regard to Liability - Third Set	
	(346) Pltfs. Interrogatories to Def. Ilco. Corp. with regard to Liability - Third Set	
30/75	(347) Defendants' Memo in Opposition to Motions of City of New York and State of Florida to Transfer and consolidate cases and request for oral argument	
	(348) Statement Pursuant to Rule 10 re Motion to Compel Eaton Corp. to give Plaintiffs its list of master Key Projects	
9/8/75	(349) Response of Def. Eaton Corp. to Pltf's Motions to Produce Documents	
0/14/75	(350) Answers of Def. Eaton Corp. to Pltfs Consolidated Interrogatories to the Eaton Corp. with Respect to Damages	
	(351) Answers of Def. Eaton Corp. to Pltfs Class Action Notice Interrogatories to Defendants	
	[illegible]	
5/15/75	(352) Letter from Ralph Dixon stating that he has withdrawn as Liaison counsel for the Defendants and setting forthathat Defs have chosen John Barnett as his replacement and approval (NJB)(M10;16/7	
0/16/75	(353) Response to Defendants' Request for Production of Documents with Respect to Plaintiffs Expert Witnesses (reply to #263)	
1/3/75	(354) Deposition of H. Webb	
1/11/75	(355) Motion to Set Trial Date and Schedule Completion of Trial Preparation	
	(356) Motion for Order to Compel Discovery Pursuant to Rule 37(a)	
	(357) Memo in Support of Plaintiffs Motion for Order to Compel Discovery from Eaton Pursuant to Rule 37(a)	
	(358) Defendants Interrogatories to Plaintiff City of Phila. and to Members of the Class it represents	
	(359) Supplemental Memo in Support of Plaintiffs Proposed Form of Class Action Notices	
12/75	(360) Deposition of William R. Haverkampf.	
"	(361) Deposition of Roger Millsbaugh Street	
14/75	(362) Notice of Deposition (11/25/75 of J.E. O'Keefe)	
17/75	(363) Brief in Opposition to Plaintiffs' Motion to Compel Production of Witness Statements Obtained by Counsel for Def. Eaton Corp.	
11/20/75	(364) Defendants Reply Memorandum in Support of Motion for Summary Judgment.	
11/24/75	(365) Contention Interrogatories to All Plaintiffs By All Defendants.	
"	(366) Supplemental Appendix "A" Answer to the First Set of Consolidated Interrogatories to Plaintiff State of Wisconsin by all defendants.	
"	(367) Notice and Motion to Produce Documents Addressed to Eaton Corp.	
11/24/75	HEARING on Motion for Order to Compel Discovery Pursuant to Rule 37(a) addressed to Eaton Corp. (10 days for affidavit) HEARING on Motion to Set Trial date and schedule completion of Trial preparation continued.	
11/28/75	(368) Notice of Deposition re State of Ohio	
12/5/75	(369) Supplemental Memo in Support of Pltf's Rule 37 Motion against Eaton Corp. to Compel Production of Witness interviews	
12/12/75	(370) Transcript of Hearing on 11/24/75 filed	
12/12/75	(371) Deposition of Thomas A. Morris	
12/15/75	(372) Stipulation of counsel for Defendants and plaintiffs	
12/22/75	(373) Supplemental Memo of Eaton in Opposition to Pltf's Rule 37 Motion to compel production of witness statements	

DATE 1976	PROCEEDINGS	Dr. Jud
1/9/76	(374) Notice of taking deposition (State of Indiana)	
	(375) Notice of taking deposition (State of New Jersey)	
	(376) Notice of taking deposition (State of Minnesota)	
1/14/76	(377) Notice to all state, County and Local Governmental Entities and Public and Private Builder-Owners	
1/[illegible]	(378) Defendants' Second Supplemental Memo Re: Class Notice and Class Designation	
1/[illegible]/76	(379) Notice of Class Action and Partial Settlement with Respect to Litigation Involving Finish Hardware.	
	(380) Deposition of Donald C. Welsch	
2/17/76	(381) Response to Defendants Second Supplemental Memorandum Regarding Class Notice and Class Disignation	
"	(382) Deposition of Marion Gruidl Weston, (San Diego, Calif) 6/16/75)	
"	(383) Notice of taking Deposition (State of Illinois)	
"	(384) Notice of taking deposition (State of Kansas)	
"	(385) Notice of taking deposition (State of Michigan)	
"	(386) Notice of taking deposition (State of New Jersey, of Martin Chandler)	
"	(387) Notice of taking deposition (State of New York)	
"	(388) Notice of taking deposition (State of Penna.)	
"	(389) Notice of taking deposition (State of Wisconsin)	
2/23/76	(390) Defendants' Interrogatories to all Plaintiffs with respect to Computerization of Data	
"	(391) Motion for Protective Order with Respect to Defendants Depositions	
"	(392) Motion for Order To Permit Defendants To Take Deposition of Peter Max Upon Oral Examination.	
2-26	(393) Notice of Order With Respect to Giving of Class Action Notices.	
[illegible]	[illegible]	
2/27	(394) Ruling on Pending Discovery Motions (Blumenfeld, J.) M 3/1/76 Copies to Liaison Counsel	
	(395) Fuling on Motions to Amend in 14,148, 14191, 14236, 15,038 15,262 (Blumenfeld, J.) M. 3/1/76 Copies to liaison counsel	
3/1/76	(396) Motion for Order compelling Discovery Pursuant to Rule 37	
3/3/76	(397) Order with Respect to the Giving of Class Action Notices (Blumenfeld, J.) M. 3/3/76 Copy to Liaison Counsel	
	(398) Notice of Class Action and Partial Settlement with Respect to Litigation Involving Finish Hardware - Copy to Liaison Counsel	
3-5-76	(399) Defts Motion to Compel Discovery	
3/9/76	(400) Defendants Motion to Compel Production of Expert Witness Documents.	
	(401) Plaintiffs Memorandum in Opposition to Defendants Motion for Order Compelling Discovery	
3/12/76	(402) Deposition of Geo. E. Werner	
	(403) Deposition of Martin Chandler	
3/10/76	(404) Correction to Notice of Motion filed at New Haven	
	(405) Notice of Motion filed at New Haven	
3/12/76	(406) Memorandum in Opposition to Defendants Motions to Compel Answers to Expert Witnesses Interrogatories and Production of Document; (407) Memorandum in Opposition to Defendants Motion to Compel Answers to Contention Interrogatories	
3/15/76	(408) Sargent & Company List of Trial Witnesses	
	(409) Summary of Testimony of Witnesses to be called on Behalf of Def. Eaton Corp.	
	(410) Designation of Witnesses for Trial by Plff.	
	(411) Preliminary Designation of Witnesses and Deposition Testimony on behalf of Eaton Corp.	

DATE 1976	PROCEEDINGS	Date Judge
3/15/76	(412) Notice of Filing Supplemental Designation of Evidence	
3/18/76	(413) Notice of Depositions	
	(414) Notice of Depositions	
3/22/76	(415) Notice of Subpoenas Duces Tecum	
	(416) Notice of Depositions	
3/24/76	RE # 391 "Granted in part & denied in part; see pre-trial order of this date" (Blumenfeld, M.) (M 3/24/76) Copies to Attys. Barnett, Bates, Dixon, Donelan, Freeman, Prout, Schneider	
	RE # 392 "Granted as set out in pre-trial order of this date" (Blumenfeld, J.(M 3/24/76) Copies to above attys.	
	RE # 396 "Granted in part and denied in part; see pre-trial order of this date(Blumenfeld, J.) (M.3/24/76) copies to above attys.	
	RE # 400 "Granted in part and denied part, see pre-trial order of th date (Blumenfeld, J.) (M 3/24/76) copies to above attys.	
	RE # 405 "Denied at this time. See pre-trial order" (Blumenfeld, J.) (M.3/24/76) Copies sent to above attys.	
	(417) Pre-Trial Order (Blumenfeld, J.) (M.3/24/76) Copies to above Attorneys	
3/25/76	(418) Notice of Filing Letter to Accompany Class Action and Partial Settlement Notice Approved(Blumenfeld, J.) Copies to Attys Bates Donelan Dixon Freeman Barnett Kirkpatrick Beatie Rome, Bancroft Kohn Berger (M 3/25/76) 236-14, 237 Am. 2251 Issued	
3/26/76	(419) Amended Notice of Subpoenas Duces Tecum	
3/29/76	(420) Mandate dated 12/22/75 "It is ordered, adjudged, and decreed that the appeal from the order of said District Court be and it hereby is dismissed in accordance with the opinion of this court with costs to be taxed against the appelants."	
4/1/76	(421) Public notice from Wall Street Journal-Eastern Edition	
3/31/76	(422) Answers of the Def. Sargent & Co. to Plaintiffs' Second set of Consolidated Interrogatories	
4/2/76	(423) Deposition of Lloyd G. Schumaker	
4/2/76	(424) Notice of Depositions	
4/31/76	(425) Notice of mailing from State of Conn.	
4/7/76	(426) Amended Notice of Depositions	
4/6/76	Deposition Subpoena issued to Kenneth Froberg - 2 copies of sub. USM-285 and check for $20 to Marshal	
4/8/76	(427) Plaintiffs Designations of documents with respect to expert witness	
4/9/76	(428) Deposition of Robert E. McFeeters	
4/12/76	(429) Notice and Motion to Compel Compliance with Notice of Deposition for Expett witnesses	
4-12	HEARING on Motion to Compel Compliance with Notice of Deposition of Expert Witnesses. Dec. Reserved.	
4/9/76	(430) Notice of Deposition	
	(431) Notice of Deposition	
4/14/76	(432) Notice of Deposition (Richard A. Cure)	
	(433) Notice of Deposition (Murry Sell)	
4/18/76	(434) Request for Admissions of Facts with Respect to Documents re (Eaton)	
	(435) Request for Admissions of Facts with Respect to Documents re Uco	
	(436) Request for Admissions of Facts with Respect to Documents re Sargent	
	(437) Request for Admissions of Facts with respect to Documents re Emhart	

DATE 1976	PROCEEDINGS	Da Judi
4/18/76	(438) Notice of Deposition - State of Arizona	
4/20	Court Reporter's notes of Proceedings held on Nov. 24, 1975, filed in Hartford. (Collard, R.)	
4/21/76	(439) Motion of Emhart Corp. to Amend Protective Order dtd 4/16/71	
4/19/76	(440) Transcript of hearing on 4/12/76	
4/20/76	(441) Marshal's 285 showing service on Edwin Kelley	
4/20/76	(442) Notice of Deposition of State of Fla.	
4/21/76	(443) Subpoena showing service on Merton J. Peck	
4-26	Court Reporter's notes of Proceedings held on April 12, 1976, filed in Hfd. (Collard, R.)	
4-27	(444) Notice of Deposition filed by deft. (5/11/76 in Denver, Col.)	
4-28	(445) Rule 37 Motion to Compel Production of Documents Prepared By Defts. Expert Economic Witnesses and Underlying Computer Data for Studies Prepared by defts. Expert Accountant Witness.	
"	(446) Plaintiffs Memorandum in Support of Rule 37 Motion for Production of Documents Relating to Purported Expert Witness Testimony,	
"	(447) Affidavit of Mailing Notice to Public Entities of Class Action and Partial Settlement with Respect to Litigation Involving Finish Hardware.	
"	(448) Exhibits 11 to 18 to the Affidavit of Jack M. Joss.	
4.27	(449) Answers to Defendants Interrogatories with Respect to Computerization of Data, filed by Pltf.	
4.26	(450) Appearance of Roxanne Barton Conlin entered for State of Iowa.	
"	(451) Appearance of Charles O. Monk II entered for the State of Maryland.	
"	(452) Appearance of Richard S. McKernon & Alfred H Carter entered for Montromery County, Maryland.	
4/30/76	(453) Notice of Deposition and Subpoena Duces Tecum(Peter Max)	
5/4/76	(454) Deposition of Richard J. Newport	
5/7/76	(455) Amendment to Amended Notice of Depositions (Froberg)	
	(456) Notice of Depositions (Beasley - Jackson, McBride)	
5/7/76	(457) Deposition of H. I. Lewter	
5/10/76	(458) Appearance by State of So. Dakota	
	(459) Notice of Appearance and Intention to Appear Samuel Seymour for parties listed in Exh. A.	
	(460) Defendants Memo in Opposition to Plaintiffs rule 37 Motion for Production of Documents prepared by Defendants Expert Witnesses	
5/13/76	(461) Objection of Def. Eaton Corp. to Pltfs Requests for Admissio of facts with respect to documents	
	(462) Appearnace of Atty. Gen of State of Wash.	
	(463) Appearnce of William Simon	
5/14/76	(464) Appearnce of Commonwealth of Kentucky	
5/17/76	(465) Rule 37 Motion to Compel Def. Sargent & Eaton to Supply Lists of all projects on which their Mater Key Systems were installed from 1950 to date.	
	(466) Memo in Support of Motion for Production of Master Key Project Lists	
	(467) Memo in Support of Defendants' Staning at Sertlement Hearing	
	(468) Reply Memorandum in Support of Rule 37 Motion to Compel Production of Documents Prepared by Defendants' Expert Economic witnesses and underlying computer data for studies prepared by Defendants expert accountant witness.	
	(469) Lists of Class members that have requested exclusion fr the Class Actions on behalf of public entities.	
	(470) Notice of Deposition of Rebecca Mc Bride	

DATE 1976	PROCEEDINGS
5/17/76	(471) Notice of Deposition of Bd. of Educ. of City of Cleveland.
	(472) Notice of Deposition of Louis Carr
	(473) Notice of Deposition of City of Los Angeles
	(474) Apperarace of Dykema, Gossett, Spencer & Goodnow and Trigg filed
5/13/76	(475) Marshal's return showing service on Kenneth Froberg
	(476) Marshal's return showing service on Roscoe M. Smith
	(477) Marshal's return showing service on Kenneth Froberg
5/17/76	(478) Objection of Def. Sargent to Pltfs Request for Admiss of Facts with Respect to Documents
	(479) Protective Order
5/20/76	(480) Deposition of Walter Scott
	(481) Appearance of Douglas Richards
5/24/76	(482) Plaintiffs Memo in opposition to contention that Non-Settling Defendants have Standing to object to the Embart Settlement.
5/24/76	(483) Memorandum in Support of Settlement with Embart Corp
	HEARING OVER TO 6/2/76
5/27/76	(484) Notice of Deposition filed. (July, 1976 of Wm Butler, G. Gregory, J. Keane, McGee and O'Neill)
"	(485) Memorandum in Opposition to Non-Settling Defendants' Claim of Standing to Object to Proposed Settlement with Embart Corporation.
"	(486) Memorandum in Support of Proposed Settlement of Embart Corporation
5/28/76	(487) Contention Interrogatories to All Plaintiffs by all Defendants.
"	(488) Request for Documents With Respect To Tabulations of Hardware Directed to All Plaintiffs by All Defendants.
"	(489) First Set of Consolidated Interrogatories To All Plaintiffs by All Defendants.
"	(490) Defendants' First Request for Production of Documents.
"	(491) Defendants' First Set of Requests for Admissions of Fact.
6/1/76	(492) Appearance of Joseph P. Griffin and Mark R. Joelson
6/2/76	(493) Deposition of John J. Schollenverger
	(494) Brief in Opposition of Def. Eaton Corp. to Plaintiffs
	(495) Amended Notice of Deposition
6-2	(496) Affidavit in support of settlement between Embart Cor. and Public Entities.
"	(497) Affidavit of Karol K. Gibbs with Respect to Embart Settlement.
	(498) Excerpts from in Chambers Conference of 5/21/76 = Transcript filed by Collard, R.
6/3/76	(499) Supplemental Preliminary Designation of Witnesses and Deposition Testimony of Eaton Corp.
	(500) Summary of Testimony of Additional Witnesses to be called on behalf of Defendant Eaton Corp.
6/4/76	(501) Appearances of James Willeford, John R. Ellis, Kent Rya, Mark S. Shipman and John J. Munzel
	(502) Appearance of Robert A. Seefried
6/4/76	(503) Exxon Corp. Memorandum in Opposition to Approval of the 80-20% Allocation in the Embart Corp. Settlement Offer.
6/7/76	Hearing before MJB on Plaintiff's Motion to Compel Production of Documents (Resolved in party by Counsel - Deposition to continu and date certain to be set.
	Hearing on Plaintiffs motion to Compel re production by Defs of Master Key Installations - Plaintiff to submit proposed order for consideration by Court

DATE 1976	PROCEEDINGS	I Ju
6/2/76	Hearing on Fairness of Proposed settlement - Dec. Reserved	
	Affidavit of Samuel H. Seymour dated 6/1/76 filed	
6/7/76	(504) Motion to Approved Form of Notice of Proposed Settlement	
	Agreement of Def. Ilco Corp. Granted (MJB-M6/8/76) Copies to Counsel	
6/8/76	(505) Exxon Corporations Memo in Opposition to Approval of	
	the 80%-20% allocation in the emhart Corp. Settlement Offer	
6/8/76	(506) Motion for Preclusion Order with Respect to Supplemental	
	Preliminary Designation of Witnesses Filed by Eaton Corp.	
	(507) Memorandum in Support of above motion	
6/9/76	(508) Ruling on Plaintiffs' Rule Motion to Compel Production	
	of Master Key Records - Proposed by Atty. Freeman	
6/10/76	(509) Proposed Settlement Agreement (Ilco Corp.)	
6/10/76	See No. 508 Ruling on Plaintiffs Rule 37 Motion (Blumenfeld, J.)	
	M-6/11/76 Copies to Attorneys	
6/11/76	(510) Defendants 1st Set of Requests for Admissions of Fact	
	(511) Defendants First set of Requests for Admissions of Fact	
	(512) Defendants First Request for Production of Documents	
	(513) Request for Documents with Respect to Tabulations of	
	Hardware Directed to All plaintiffs by all Defendants	
	(514) Contention Interrogatories to all Plaintiffs by all	
	Defendants	
	(515) Motion to Produce Documents Addressed to Eaton Corp.	
	(516) Notice of Filing Proposed Order on Ilco Settlement	
	(517) Order with respect to the giving of Notice of Partial	
	Settlement (Ilco Corp) Blumenfeld, J. M-6/11/76 Copies to Attorneys	
6/14/76	(518) Transcript of Fairness Hearing on Proposed Settlement	
	(519) Notice of Deposition Bd. of Educ. of Los Angeles, Attach-	
	ment, Documents Requested and Affidavit-Cert. copy returned to office	
	of Arter & Hadden	
	(520) Supplemental Answers to Plaintiffs Interrogatories	
	(521) Motion to Strike Portions of Exxon Corp Memo in Opposition	
	to Approval of the Allocation of the Emhart Settlement-Dismissed as	
	Moot MJB- M 6/15/76 Copies to parties	
	(522) Memorandum of Decision MJB- J. M 6/15/76 copies to parties	
6/16/76	(523) Objections Reply to the "Motion to Strike Portions of Exxon Corporation's	
	Memorandum in Opposition to Approval of the Allocation of the Emhart Settlement.	
6/2/76	(524) Affidavit of Samuel H. Seymour filed. (Rec'd from MJB this date 6/17/76)	
"	(525) Notice of Appearance of Samuel H. Seymour.	
6/17/76	(526) Notice of Appearance and Intention to Appear	
"	(527) Memorandum of Certain Members of the Private Builderpower Class Concernin	
	The Proposed Class Action Settlement with Defendant Emhart Corp. (rec'd from MJB)	
"	(528) Notice of Appearance and Intention to Appear filed by Mark R. Joelson and	
	Joseph P. Griffin. ((rec'd from MJB this date)	
6/17/76	(529) Designation of Deposition Testimony filed by Plff.	
6/18/76	Endorsement on motion for preclusion order with respect to supplemental (#5	
	preliminary designation of witnesses filed by Eaton Corp." Motion granted. Dofs.	
	have failed to demonstrate good cause as required by pre-trial order of Mar. 23, 1976	
	Blumenfeld, J. M 6-18-76. Copies to counsel.	
"	(530) Plaintiffs Suggestions with respect to trial of the Fraudulent Con-	
	cealment Issues.	
	(531) Brief of Eaton Corp. in Opposition to Plaintiffs motion for preclusion.	
6/21/76	(532) Objections to Defendants' First Request for Production of Documents.	
	(533) Objections to First Set of Consolidated Interrogatories to All Plain-	
	tiffs by All Defendants. 13	

D.L. #45 #13

D. C. 110 Rev. Civil Docket Continuation 14

DATE 1976	PROCEEDINGS	Ju
6/2/76	(534) Objections to Request for Documents With Respect to Tabulations of Hard	
	ware Directed to All Plaintiffs by All Defendants.	
"	(535) Objections to Contention Interrogatories to All Plaintiffs by All Defts.	
"	(536) Objections to Defendants First Set of Requests for Admissions of Fact.	
"	(537) Transcript of Hearing held in Chambers on 5/21/76. Collard, R.	
"	(538) Transcript of Hearing held on June 2, 1976. Collard, R.	
6-23	(539) Notice of Deposition (Morton Peck on 7/19/76,) Subpoena signed and	
	sealed and hagded to Marshal for service.	
6-24	(540) Notice of Filing and Affidavit of Mailing Notice of Partial Settlement	
	(Ilco Corporation)	
"	(541) Affidavit of Robert J. Sheehan.	
"	(542) Objectors Motion for Reconsideration	
"	(543) Motion to Approve Settlement Agreement of Defendant Ilco Corporation	
6-25	Motion #542 motion for reconsideration "motion denied." Blumenfeld J.	
	m 6-25-76. Copies to counsel.	
6-25	(544) Motion to Produce Documents Addresses to All Plaintiffs. (Eaton Corp.)	
"	(545) Plaintiffs Memorandum in Support of The Proposed Settlement With Ilco	
	Corporation.	
"	(546) Notice of Subpoena Duces Tecum. (Two certified copies mailed to Atty	
	Freeman)	
"	(547) Notice of Deposition (Joseph Walker) and Request for Production of	
	Documents.	
"	(548) Notice of Deposition (Otto Winter) and Request for Production of	
	Documents.	
"	(549) Notice of Depostion (Wm Searing) & Request for Production of Documen	
"	(550) Notice of Deposition(Robt Black) & Request for Production of Documents	
"	(551) Notice of Deposition(J. Trumble) & Request for Production of Documents	
"	(552) Notice of Deposition(R.Cummins) & Request for Production of Documents	
"	(553) Stipulation of Dismissal of Emhart Corporation	
"	(554) Motion of All Plaintiffs and Defendant Emhart Corporation For Direction	
	Entry of Final Judgment As to Emhart Corporation Pursuant to Rule 54(b) Fed. R.C.	
"	(555) Deposition of Sidney McMaster.(Collard, R.)	
6-21	(556) Marshal's return showing service on Edward Walton.	
6/28/	(557) Motion for Protective Order	
	(558) Motion for Protective Order	
	(559) Reply to Brief of Eaton Corp. in Opposition to Plaintiffs	
	Motion for Preclusion	
	(560) Plaintiffs Response to Objector Exxon Corp's Motion for	
	Reconsideration re Approval and Aldocation of the Emhart Settlement	
	(561) Objectors' Opposition to the Motion for the Entry of a	
	Final Rule 54(b) Final Judgment as to Emhart Corp.	
6/29/	(562) Motion for Joinder in Objectors' Motion for Reconsidera	
	(563) Notice of Filing of Aff. of Mailing	
6/29	Court Reporter's notes of Proceedings held on May 21 and June	
	2, 1976, filed in Hfd. (Collard, R.)	
6/ /76	(564) Deposition of Susan G. Ptacek	
6/ /76	PROTECTIVE ORDER see #557 (Blumenfeld, J.) M-6/30/76 copies to	
	Counsel	
	PROTECTIVE ORDER see #558 (Blumenfeld, J.) M-6/30/76 copies to	
	Counsel	
6/28/76	(565) Memorandum of Law on the Liability of a Parent Corp.	
	for Debts or Acts of Subsidiary	
	(566) Affidavit of Henry B. Dewey for Ilco	
	FAIR HEARING re Proposed Settlement Motion- Exxon's objections	
	Proposed Settlement agreement filed. MOTION GRANTED - Settlemen	

DATE 1976	PROCEEDINGS
6/28	Agreement fully executed to be filed by patties- Proposed lpartial Judgment to be submitted.
6/29	(567) Rule 54(b) certification (Blumenfeld, J.) M-6/30/76 Copies to Counsel
6/30	ORDER OF APPROVAL OF SETTLEMENT AND FINAL JUDGMENT OF DISMISSAL OF EMHART CORP. WITH PREJUDICE (see #554 (Blumenfeld, J.) M-6/30/76 Copies to Counsel
*	SEE #543 "Approved in Open Court pursuant to Rule 23(e), Blumenfeld M-6/30/76 Copies to counsel
6/30	(568) Memorandum of Def. Eaton Corp. regarding issue of Fraudulent Concealment.
	(569) Notice of Deposition of Richard Hoeh
	(570) Marshal's return showing service on Merton J. Peck
	(571) Response of Defendant Sargent & Co. to "Plaintiffs" Suggestion s with respect to Trial of the Fraudulent Concealment Issues
7/1/76	(572) Notice of Filing and Reply to Brief of Eaton Corp. in Opposition to Plaintiffs' Motion for Preclusion
	(573) Notice of Filing and Plaintiffs' Response to Objector Exxon Corp's Motion for Reconsideration re Approval and allocation of of the Emhart Settlement.
	(574) Transcript of June 28 hearing filed.
	(575) Designation of Deposition Testimony by Def. Sargent & Co.
7/2/76	(576) Def. Eaton's Designation of Deposition Testimony
	(577) Settlement Agreement (Ilco Corp.)
	(578) Stipulation of Dismissal of Ilco Corp.
	(579) Motion of All Plaintiffs and Defendant Ilco. Corp. for Direction of Entry of Final Judgment as to Ilco Corp. Pursuant to Rule 54(b) SEE SECOND ENTRY FOR JUNE 30 * (Proposed Order not signed)
7/6/76	(580) Motion of Sargent & Co. for Permission to Add names to Witness list
	(581) Motion of Eaton Corp. to Supplement its list of trial Witnesses for Good Cause
	(582) Memorandum in Support of Motion of Eaton Corp. to Supplement its list of trial witnesses for good cause shown
7/8	Court Reporter's notes of Proceedings held on June 28, 1976, filed in Hfd. (Collard, R.)
7/14/76	SEE #578 "Approved" MJB, U. S. D.J. M-7/14/76 Copies to Counsel & Pa
	(579-A) SEE #579 Order approving Settlement (M.J.B., U.S.D.J. M-7/14/76 Copies to Counsel and Panel
	(583) Motion for Joinder in Objectors' Motion for Reconsideratic
	(584) Motion for Protective order
	(585) First Supplement to Designation of Deposition Testimony by Def. Sargent & Co.
7/15/76	(586) Counterdesignation of Deposition Testimony by Def. Sargent
7/16/76	(587) Designation of Plaintiffs Trial Documents Pursuant to the Court's Order of March 23, 1976
	(588) Motion for Ext. of Time
	(589) Notice of Deposition of Nelson Henry
	(590) Designation of Trial Documents for State of Conn.
7/19/76	(591) Plaintiffs' Designation of Evidence and Facts to be Proven at Trial
	(592) Designation of Documents
	(593) Notice of Deposition of Lloyd Olsem
	(594) Defendnnt Eaton Corporations Counter Designation of Deposition Testimony

DATE	PROCEEDINGS
1976	
7/19/76	(595) Defendant Eaton Corporation's Objection to Plaintiffs' Designation of Deposition Testimony
	(596) Memorandum in Support of Objections of Eaton Corporation to Designations of Plaintiffs
	(597) Notice of Depositions
	* (598) Rule 37 Motion to Compel Eaton Corp. to Comply with Discovery Ordered by the Court and Discovery Requested by Plaintiffs.
	(599) Memorandum in Support of Rule 37 Motion to Compel Eaton Corp. to Comply with Discovery Ordered by the Court and Discovery Requested by Plaintiffs.
7/20/76	(600) Notice of Appeal - Certified copy with certified copy of Docket sheet to Court of appeals, copies of notice to Liaision Counsel and Atty. Dixon
7/21/76	SEE # 588 Motion Granted MJB,J.- M 7/21/76 Copies to Liaison Coun Bates, Donelan and Dixon
7/22/76	(601) Deposition of Wm. A. Scaringe filed
7/23/76	(602) Notice of Deposition of C. F. Sargent
	(603) Plaintiffs' Answers to Defendants Expert Witness Interrogatories to all Plaintiffs. with notice of filing.
8/3/76	(604) Notice of Appeal - Certified Copy with Certified of Docket Sheet to Court of Appeals, Copies of notice to Liaison Counsel and Atty. Dixon.
8/2/76	(605) Notice of Deposition of Leo Freeman
7/29/76	(606) Motion for Extension of Time to Object to Plaintiffs Designations of Trial Documents.
8/3/76	(607) Designation of Evidence and Facts to be Proven at Trial by Defendant Eaton Corp.
	(608) Request of Defendants Sargent Eo and Eaton Corp. Charge the Jury
	(609) Motion for Order Compelling the Commonwaelth of P to Produce Documents Relating to Contrators Letters
	(610) Motion to Exclude Defendant Eaton's Designation o Trial Testimony.
7/30/76	(611) Designation of Trial Evidence by Def. Sargent C
	(612) Second Supplement to Designation of Deposition Testimony by Def. Sargent & Co.
8/3/76	(613) Memorandum in Support of Plaintiffs Objection t Defendant Eaton's and Def. Sargent's Designation of Deposition Testimony.
	(614) Notice of Filing and Plaintiff's Counterdesignat of Deposition Testimony
	(615) Plaintiffs Objections to Def. Eaton's and Def. Sargents Designation of Deposition Testimony
	(616) Notice of Filing and Plaintiffs Request to Charg the Jury
	(617) Motion for Protective Order(re Miles & Mauro &o.
	(618) Memorandum of Eaton Corp. in Opposition to Rule Motion of Plaintiffs.
	* (619) Letter withdrawing Rule 37 Motion to Compel (See
	(620) Receipt from Court of Appeals re Appeal sent #20
8/3/76	Re: #617"Granted" MJB, J M-8/3/76 Copies to Counsel
	Re: #606 "Time enlarged to Aug 13, 1976 , MJB, J. M-8/3/76
	Re: #583 "Denied as untimely filed - The motion of Exxon for reconsideration had been denied, MJB, J. M-8/3/76, Copies to Coun

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

CITY OF PHILADELPHIA, on behalf of itself and on behalf of all state, county and local governments and governmental agencies throughout the United States,	CIVIL ACTION NO. 70-352
Plaintiff	
	COMPLAINT - CLASS ACTION
vs.	
EMHART CORPORATION; SARGENT AND COMPANY; EATON YALE AND TOWNE, INC.; and ILCO CORPORATION;	JURY TRIAL DEMANDED
Defendants	

COMPLAINT

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 731 (15 U.S.C. §1), to recover treble damages and the costs of suit, including a reasonable attorney's fee, against the defendants for the injuries sustained by plaintiff and other members of the class represented by it by reason of defendants' violations, as hereinafter alleged, of Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. §1), commonly known as the Sherman Act.

2. Plaintiff, City of Philadelphia, is a municipal corporation of the Commonwealth of Pennsylvania.

CLASS ACTION ALLEGATIONS

3. Plaintiff is representative of a class as defined by Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and brings this action on behalf of the entire class. The class consists of all state, county and local governments and governmental authorities and agencies in the United States who have purchased locks with master key systems from one or more of the defendants and/or their co-conspirators during the period of the combinations and conspiracies alleged herein. The size of the class is in excess of 21,000, consisting of 50 states, the District of Columbia, 3,049 counties, 18,048 municipalities (683 of which have a population in excess of 25,000) and governmental agencies, thereof, the exact number of which is presently unknown to plaintiff.

4. Plaintiff will adequately protect the interests of the absent members of the class. Plaintiff's interests are coincident with, not adverse to, the interests of the members of the class.

5. There are questions of law and fact common to the class, which questions relate both to the illegal combinations and conspiracies alleged among each defendant and its distributors and among all the defendants. These common questions of law and fact predominate over any questions which may affect only individual class members.

6. The class action is superior to other available methods for the fair and efficient adjudication of this controversy. The class is readily definable and whatever difficulties may exist, if any, in its management will be greatly outweighed by the benefits of the class action device, including but not limited to the elimination of the possibility of repetitious litigation and providing a method of redress for small claims which may otherwise not warrant individual litigation.

7. The prosecution of separate actions by individual members of the class will create the risk of inconsistent or varying adjudications in different jurisdictions with respect to various members of the class.

8. Defendant Emhart Corporation, also referred to herein as "Emhart", is a corporation organized and existing under the laws of the State of Connecticut, having its principle place of business and offices in Hartford, Connecticut. Russell and Erwin and P. & F. Corbin (hereinafter referred to as "Russwin" and "Corbin", respectively) are sales divisions of the New Britian Division of Emhart. Emhart is one of the major manufacturers of master key systems in the United States.

9. Defendant Sargent and Company, also referred to herein as "Sargent", is a corporation organized and existing under the laws of the State of Delaware, having its principle place of business and offices in New Haven, Connecticut. Sargent is a

subsidiary of Walter Kidde and Company, Inc.

10. Defendant Eaton Yale and Towne, Inc., also referred to herein as "Yale", is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business and offices in Cleveland, Ohio and is engaged in the manufacture of master key systems at its Yale lock and hardware division, which is located in Rye, New York.

11. Defendant Ilco Corporation formally doing business and known as Independent Lock Company, and referred to herein as "Ilco", is a corporation organized and existing under the laws of the Commonwealth of Massachusetts having its principal place of business and offices in Fitchburg, Massachusetts.

12. Each of the afore-named defendants is a major manufacturer of master key systems in the United States and each transacts business and is found in the Eastern District of Pennsylvania. During the time of the conspiracy alleged herein, each of said corporations engaged in the business of manufacturing, selling and distributing master key systems in the Eastern District of Pennsylvania and in the various states of the United States.

13. (a) Emhart has approximately nine hundred distributors located throughout the United States. Master key systems manufactured by Emhart are sold by its Russwin and Corbin sales divisions, under the brand names of "Russwin" and "Corbin", to distributors who represent either, but not both, of said sales divisions.

(b) Sargent has approximately one hundred seventy five distributors located throughout the United States.

(c) Yale has approximately two hundred distributors located throughout the United States.

(d) Ilco has approximately one hundred fifty distributors located throughout the United States.

(e) Each of the foregoing distributors of each of the defendants purchases master key systems from each defendant for which it acts as a distributor and resells them for use in hospitals, colleges, schools, hotels, apartments, office buildings and similar buildings. Frequently, the owner or architect for a new building will request that a distributor from one of the defendants prepare specifications for a master key system to be installed in the new building. These specifications are usually prepared without specific charge and generally specify the installation of the master key system manufactured by the defendant for whom the distributor acts.

14. Master key systems are lock and key systems designed specifically for a particular building or complex of buildings in accordance with the plan for limiting access to specified areas within such buildings. Normally such a system provides a key for each door, each of which is keyed differently; one or a series of master keys which will lock and

unlock a certain group of doors; one or a series of grand master keys which will lock or unlock two or more groups of doors; and a great grand master key which will lock and unlock all the doors in the system. Frequently, the owner of the building which has a master key system installs an extension to the existing system when expanding existing facilities.

15. Various persons, firms, and organizations, not made defendants herein have participated as co-conspirators with the defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof. Such co-conspirators include, but are not limited to, each defendant's distributors of master key systems.

16. There is a continuous flow in interstate of commerce of the hardware used in master key systems from the plant of each of the defendant manufacturers to their distributors located in other states. In 1966, Emhart's sales of hardware used in master key systems exceeded ten million dollars. In 1966, Sargent's sales of hardware used in master key systems exceeded six million dollars. In 1966, Yale's sales of hardware used in master key systems exceeded five million dollars. In 1966, Ilco's sales of hardware used in master key systems exceeded four million dollars.

17. Beginning at least as early as 1960 and continuing thereafter until at least July of 1969, the exact dates being to the

plaintiff unknown, because of defendants' fraudulent concealment referred to in paragraph 21 hereof, the defendants and co-conspirators have, throughout the United States, engaged in a combination and conspiracy in restraint of the foregoing inter-state trade and commerce in violation of Section 1 of the Sherman Act, Section 1 of the Act of Congress of July 2, 1890, amended (15 U.S.C. §1).

18. The unlawful combination and conspiracy consisted of a continuing agreement and a concert of action among the defendants and certain co-conspirators, and as a result, among each defendant and its co-conspirator-distributors, the substantial terms of which have been:

(a) Co-conspirator distributors of each defendant will not sell master key systems and extensions to such master key systems outside the territories allocated to them by that defendant for which the distributor acts.

(b) Co-conspirator distributors of each defendant will not compete against any other distributor of that defendant for which he acts, who has written the specifications for the master key system.

(c) Co-conspirator distributors of each defendant will not bid on or sell extensions to master key systems when the original master key system was sold by another distributor of that defendant for which he acts as a distributor.

19. For the purpose of effectuating and carrying out the aforesaid unlawful combination and conspiracy, the defendant and co-conspirators have done the things which as hereinbefore alleged they conspired and agreed to do and more particularly, have cooperated in the policing and enforcing of the said conspiracy.

20. The aforesaid combination and conspiracy has had the following effects among others:

(a) Competition between and among the defendants and co-conspirators was restricted and suppressed, and purchasers of master key systems, including the plaintiff and members of the class it represents, have been deprived of benefits of free and open competition.

(b) Competition between the distributors of a particular defendant in the sale of that defendant's master key systems and extensions to such master key systems has been eliminated and the plaintiff and members of the class it represents have been deprived of the opportunity of obtaining such products in an unrestricted market.

(c) Prices of master key systems sold by defendant corporations and their distributors to plaintiff and the members of the class it represents were raised, fixed, stabilized and maintained at non-competitive levels.

21. Plaintiff had no knowledge of the combination and conspiracy alleged herein, or of any facts which might have led to the discovery thereof until approximately July 11, 1969. Plaintiff could not have discovered the conspiracy at an earlier date by the exercise of due diligence because of deceptive practices and techniques of secrecy employed by defendants to avoid detection and to fraudulently conceal such combination and conspiracy.

22. During the period from at least 1960 to July 1969, plaintiff and members of the class it represents have purchased locks with master key systems sold by one or more of the defendants and co-conspirators.

23. By reason of the defendants' conspiracy hereinabove alleged and because of each defendant's conspiracy hereinabove alleged with its respective distributors, plaintiff's aforesaid purchases were made at prices higher than the prices which plaintiff would have had to pay under natural conditions of competition in the absence of any such conspiracies and plaintiff has been thereby injured and damaged. The other members of the class represented by plaintiff have purchased the products described herein at prices illegally enhanced by the defendants' conspiracy as herein alleged and by each defendant's conspiracy as herein

alleged with its respective distributors and the other members of the class represented by plaintiff have been injured and damaged thereby. Plaintiff is unable to state its damages with precision at the present time, since its determination will require discovery of and an analysis and accounting from defendants' books and records.

WHEREFORE, plaintiff demands:

(a) That the alleged combination and conspiracy among the defendants be adjudged and decreed to be in unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

(b) That the alleged combination and conspiracy among each of the defendants and its distributors respectively be adjudged and decreed to be in unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

(c) Judgment be entered against the defendants and in favor of plaintiff and each member of the class it represents for threefold the damages determined to have sustained by plaintiff together with the costs of suit, including reasonable attorney's fees;

(d) That defendant be enjoined from

continuing the acts, conduct and conspiracy hereinbefore alleged;

(a) Such other and further relief as may appear necessary and appropriate.

Edward G. Bauer
City Solicitor of
City of Philadelphia

David Berger
Herbert B. Newberg
H. Laddie Montague, Jr.
Howard L. Schambelan
Alan M. Lerner
Special Counsel for
Plaintiff City of Philadelphia

Of Counsel:
COHEN, SHAPIRO, BERGER,
POLISHER AND COHEN
22nd Floor
Philadelphia Saving Fund Bldg.
Philadelphia, Pennsylvania 19107

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

AMHERST LEASING CORPORATION and those plaintiffs listed on Exhibit "A" attached hereto, on their own behalf and on behalf of owners and builder-owners of apartment houses, office buildings, hotels and motels throughout the United States Plaintiffs	:	CIVIL ACTION NO. 70-494
v.	:	COMPLAINT - CLASS ACTION
EMHART CORPORATION; SARGENT AND COMPANY; EATON YALE AND TOWNE, INC.; and ILCO CORPORATION; Defendants	:	JURY TRIAL DEMANDED

C O M P L A I N T

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 731 (15 U.S.C. §1), to recover treble damages and the costs of suit, including a reasonable attorney's fee, against the defendants for the injuries sustained by plaintiff and other members of the class represented by them by reason of defendants' violation, as hereinafter alleged, of Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. §1), commonly known as the Sherman Act.

2. Plaintiff Amherst Leasing Corporation and those plaintiffs listed on Exhibit "A" attached hereto have their principle place of business at 97-77 Queens Boulevard, Forest Hills, New York. Those plaintiffs with the word "Corporation" in their title are corporations duly organized and existing under the laws of the State of New York. All other plaintiffs are either partnerships or trusts. All plaintiffs are builders-owners of apartment houses and/or office buildings.

CLASS ACTION ALLEGATIONS

(paragraphs 3 through 7)

3. Plaintiffs are representatives of a class as defined by Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and bring this action on behalf of the entire class. The class consists of owners and builder-owners of apartments, hotels, motels and office buildings throughout the United States who have purchased locks with master key systems manufactured by one or more of the defendants and/or their co-conspirators during the period of the combinations and conspiracies alleged herein. During the years 1960 through 1969, there were approximately 184,818 residential units for five or more families constructed throughout the United States and approximately 87,499 office buildings. It is estimated that in 1968, there were approximately 21,400 hotels and 44,000 motels throughout the United States. The class is so numerous that joinder of all members is impracticable.

4. Plaintiffs are builders of apartment houses and office buildings and will adequately represent the interests of the absent members of the class. Plaintiffs' interests are coincident with, and not adverse to the interests of the members of the class.

5. There are questions of law and fact common to the class, which questions relate, inter alia, both to the illegal combinations and conspiracies hereinafter alleged among each defendant and its distributors and among all the defendants. The common questions of law and fact involved herein predominate over any questions which may affect only individual class members.

6. The class action is superior to other available methods for the fair and efficient adjudication of this controversy. Whatever difficulties may exist, if any, with the management of the class will be greatly outweighed by the benefits of the class action device, including but not limited to the elimination of the possibility of repetitious litigation and providing a method of redress for small claims which may otherwise not warrant individual litigation.

7. The prosecution of separate actions by individual members of the class will create the risk of inconsistent or varying adjudications in different jurisdictions with respect to various members of the class.

8. Defendant Emhart Corporation, also referred to herein as "Emhart", is a corporation organized and existing under the laws of the State of Connecticut, having its principle place of business and offices in Hartford, Connecticut. Russell and Erwin and P. & F. Corbin (hereinafter referred to as "Russwin" and "Corbin", respectively) are sales divisions of the New Britian Division of Emhart. Emhart is one of the major manufacturers of master key systems in the United States.

9. Defendant Sargent and Company, also referred to herein as "Sargent", is a corporation organized and existing under the laws of the State of Delaware, having its principle place of business and offices in New Haven, Connecticut. Sargent is a subsidiary of Walter Kidde and Company, Inc.

10. Defendant Eaton Yale and Towne, Inc., also referred to herein as "Yale", is a corporation organized and existing under the laws of the State of Ohio, having its principle place of business and offices in Cleveland, Ohio and is engaged in the manufacture of master key systems at its Yale lock and hardware division, which is located in Rye, New York.

11. Defendant Ilco Corporation formally doing business and known as Independent Lock Company, and referred to herein as "Ilco", is a corporation organized and existing under the laws of the Commonwealth of Massachusetts havings its principal place of business and offices in Fitchburg, Massachusetts.

12. Each of the afore-named defendants is a major manufacturer of master key systems in the United States and each transacts business and is found in the Eastern District of Pennsylvania. During the time of the conspiracy alleged herein, each of said corporations engaged in the business of manufacturing, selling and distributing master key systems in the Eastern District of Pennsylvania and in the various states of the United States.

13. (a) Emhart has approximately nine hundred distributors located throughout the United States. Master key systems manufactured by Emhart are sold by its Russwin and Corbin sales divisions, under the brand names of "Russwin" and "Corbin", to distributors who represent either, but not both, of said sales divisions.

(b) Sargent has approximately one hundred seventy five distributors located throughout the United States.

(c) Yale has approximately two hundred distributors located throughout the United States.

(d) Ilco has approximately one hundred fifty distributors located throughout the United States.

(e) Each of the foregoing distributors of each of the defendants purchases master key systems from each defendant for which it acts as a distributor and resells them for use in hospitals, colleges, schools, hotels, apartments, office buildings and similar buildings. Frequently, the owner or architect for a new building will request that a distributor from one of the defendants prepare specifications for a master key

system to be installed in the new building. These specifications are usually prepared without specific charge and generally specify the installation of the master key system manufactured by the defendant for whom the distributor acts.

14. Master key systems are lock and key systems designed specifically for a particular building or complex of buildings in accordance with the plan for limiting access to specified areas within such buildings. Normally such a system provides a key for each door, each of which is keyed differently; one or a series of master keys which will lock and unlock a certain group of doors; one or a series of grand master keys which will lock or unlock two or more groups of doors; and a great grand master key which will lock and unlock all the doors in the system. Frequently, the owner of the building which has a master key system installs an extension to the existing system when expanding existing facilities.

15. Various persons, firms, and organizations, not made defendants herein have participated as co-conspirators with the defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof. Such co-conspirators include, but are not limited to, each defendant's distributors of master key systems.

16. There is a continuous flow in interstate of commerce of the hardware used in master key systems from the plant of each of the defendant manufacturers to their distributors located in other states. In 1966, Emhart's sales of hardware used in master key systems exceeded ten million dollars. In 1966, Sargent's sales of hardware used in master key systems exceeded six million dollars. In 1966, Yale's sales of hardware used in master key systems exceeded five million dollars. In 1966, Ilco's sales of hardware used in master key systems exceeded four million dollars.

17. Beginning at least as early as 1960 and continuing thereafter until at least July of 1969, the exact dates being to the plaintiffs unknown because of defendants' fraudulent concealment referred to in paragraph 21 hereof, the defendants and co-conspirators have, throughout the United States, engaged in a combination and conspiracy in restraint of the foregoing interstate trade and commerce in violation of Section 1 of the Sherman Act, Section 1 of the Act of Congress of July 2, 1890, amended (15 U.S.C. §1).

18. The unlawful combination and conspiracy consisted of a continuing agreement and a concert of action among the defendants and certain co-conspirators, and as a result, among each defendant and its co-conspirator-distributors, the substantial terms of which have been:

(a) Co-conspirator distributors of each defendant will not sell master key systems and extensions to such master key systems outside the territories allocated to them by that defendant for which the distributor acts.

(b) Co-conspirator distributors of each defendant will not compete against any other distributor of that defendant for which he acts, who has written the specifications for the master key system.

(c) Co-conspirator distributors of each defendant will not bid on or sell extensions to master key systems when the original master key system was sold by another distributor of that defendant for which he acts as a distributor.

19. For the purpose of effectuating and carrying out the aforesaid unlawful combination and conspiracy, the defendant and co-conspirators have done the things which as hereinbefore alleged they conspired and agreed to do and more particularly, have cooperated in the policing and enforcing of the said conspriacy.

20. The aforesaid combination and conspiracy has had the following effects among others:

(a) Competition between and among the defendants and co-conspirators was restricted and suppressed, and purchasers of master key systems, including the plaintiffs and members of the class they represent, have been deprived of benefits of free and open competition.

(b) Competition between the distributors of a particular defendant in the sale of that defendant's master key systems and extensions to such master key systems has been eliminated, and the plaintiffs and members of the class they represent have been deprived of the opportunity of obtaining such products in an unrestricted market.

(c) Prices of master key systems sold by defendant corporations and their distributors to plaintiffs and other members of the class they represent were raised, fixed, stabilized and maintained at non-competitive levels.

21. Plaintiffs had no knowledge of the combination and conspiracy alleged herein, or of any facts which might have led to the discovery thereof until approximately July 11, 1969. Plaintiffs could not have discovered the conspiracy at an earlier date by the exercise of due diligence because of deceptive practices and techniques of secrecy employed by defendants to avoid detection and to fraudulently conceal such combination and conspiracy.

22. During the period from at least 196[illegible] to July 1969, plaintiffs and members of the class they represent have purchased locks with master key systems sold by one or more of the defendants and co-conspirators.

23. By reason of the defendants' conspiracy hereinabove alleged and because of each defendant's conspiracy hereinabove alleged with its respective distributors, plaintiffs' aforesaid purchases were made at prices higher than the prices which plaintiffs would have had to pay under natural conditions of competition in the absence of any such conspiracies and plaintiffs have been thereby injured and damaged. The other members of the class represented by plaintiffs have purchased the products described herein at prices illegally enhanced by the defendants' conspiracy as herein alleged and by each defendant's conspiracy as herein alleged with its respective distributors and the other members of the class represented by plaintiffs have been injured and damaged thereby. Plaintiffs are unable to state their damages with precision at the present time, since their determination will require discovery of and an analysis and accounting from defendants' books and records.

WHEREFORE, plaintiffs demand:

(a) That the alleged combination and conspiracy among the defendants be adjudged and decreed to be unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

(b) That the alleged combination and conspiracy among each of the defendants and its distributors respectively be adjudged and decreed to be in unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

(c) Judgment be entered against the defendants and in favor of each plaintiff and each member of the class they represent for threefold the damages determined to have been sustained by each plaintiff together with the costs of suit, including reasonable attorney's fees;

(d) that defendant be enjoined from continuing the acts, conduct and conspiracy hereinbefore alleged;

(e) Such other and further relief as may appear necessary and appropriate.

David Berger
Herbert B. Newberg
H. Laddie Montague, Jr.
Howard L. Schambelan
Alan M. Lerner
Counsel for Plaintiffs

Of Counsel:
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Name of Corporation

Amherst Leasing Corp.
Annapolis Leasing Corp.
Argentine Leasing Co.
Atlantis Leasing Corp.
Auburn Leasing Corp.
Brazilia Leasing Co.
Brisbane Leasing Co.
Bucknell Leasing Corp.
Cambridge Leasing Corp.
Canada Leasing Corp.
Ceylon Leasing Co.
Citadel Leasing Corp.
Colombia Leasing Co.
Copehagen Leasing Corp.
Georgetown Leasing Corp.
Greenwich Leasing Corp.
Hampton Leasing Corp.
Harvard Leasing Corp.
Imperial Leasing Corp.
LaFrance Leasing Corp.
London Leasing Corp.
Mandalay Leasing Co.
Martinique Leasing Corp.
Melbourne Leasing Co.
Mexico Leasing Corp.
Montauk Leasing Co.
Montclair Leasing Co.
Nautilus Leasing Corp.
Northwestern Leasing Corp.
Notre Dame Leasing Corp.
Oxford Leasing Corp.
Panama Leasing Co.
Pennsylvania Leasing Corp.
Peru Leasing Company
Purdue Leasing Corp.
Rome Leasing Corp.
Shalimar Leasing Co.
Singapore Leasing Co.
Sydney Leasing Co.
Syracuse Leasing Corp.
Tulane Leasing Corp.
Uess Leasing Corp.
Wellington Leasing
West Point Leasing Corp.
Westport Leasing Corp.
Yaille Leasing Corp.

EXHIBIT "A"

KMS

(D44)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- X

IN RE:

MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

ALL CASES

- X

Deposition of plaintiff, AMHERST LEASING CORPORATION, by ANTHONY SCAVO, taken by defendants pursuant to notice dated October 29, 1973, at the offices of Messrs. Cahill, Gordon & Reindel, 80 Pine Street, New York, N. Y. 10005, on November 19, 1973, at 10:20 a.m., before William Blitz, a Certified Shorthand Reporter and Notary Public of the State of New York.

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19 PARK ROW, N.Y. 10038 PHONE 349-6720

and determine what kind it was or what do you mean by that policy?

A Well, I -- I have to explain something I suppose about hardware.

Q Please do.

A Usually hardware is a relatively insignificant part of a cost of the entire job. It is very minimal. It may be a very small percentile. Maybe not even a percentile. Maybe to give you a number, .25 of one percent.

And usually if you buy hardware of a certain supplier or distributor, it becomes repetitive because you need replacements, and more or less you get locked in after awhile with one distributor.

Q When you say you usually get locked in with one distributor, let me ask you to elaborate on that a little further exactly what you mean by that.

A Well, for instance -- I suppose it's difficult to explain. But you start off in construction -- let's assume you start from initial phase, initial job. The building is the first building he ever built, right?

H as to buy hardware for it. So he buys and he finally decides this is the type I'm going to use, the company I'm going to use, and he buys it.

As I said, the price of the hardware in

relation to the entire price of the project is very, very, very minor. And he goes to the next building, and if he maintains his building and keeps them and dosen't sell them and has a management responsibility, he's faced with a couple of problems.

If he does not -- if he goes to a different company -- a different company's material --

Q A different lock company, you mean?

A A different lock company, he has to replace -- on the initial building, he is going to pay an exorbitent amount or it is difficult to obtain a replacement lock, etc. So he ends up repeating the same supplier simply because it is convenient and it is relatively unimportant in cost.

Q To make sure that I understand, this decision to continue with one brand once a satisfactory relationship has been established is the decision of the builder or purchaser?

MR. MONTAGUE: I object to the form of that question. I don't think that's what he said.

A It's more or less mandatory to do so.

Q Why is it mandatory?

A Well, suppose if you acquire several buildings

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE:	:	MDL DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	:	(ALL CASES)

PRE-TRIAL ORDER NO. 1

A preliminary pre-trial conference was held in the above-captioned cause on the 8th day of March, 1971, wherein or as a result of which the following is hereby Ordered:

1. The Court now appoints liaison counsel as follows:

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FOR DEFENDANTS:

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TEL: (203) 278-1330

Appointment of liaison counsel is to insure the orderly and expeditious conduct of discovery and pre-trial hearings and does not limit the right of any counsel to be heard on any matter.

2. Service of all papers shall be made on each of the attorneys on the service list of attorneys attached hereto and designated as Schedule A.

3. Plaintiffs' discovery:

(a) All interrogatories and requests for production of documents filed by plaintiffs in City of Philadelphia v. Emhart Corp., et al, Civil Action No. 14,233, and related Civil Action No. 14,234, Amherst Leasing Corp. v. Emhart Corp., et al, together with the defendants' responses thereto (answers to interrogatories and documents delivered to counsel), shall be deemed filed in all actions.

(b) All interrogatories and requests for production of documents filed by plaintiffs in any action other than City of Philadelphia v. Emhart Corp., et al, Civil Action No. 14,233, and related Civil Action No. 14,234, Amherst Leasing Corp. v. Emhart Corp., et al, shall be deemed to have been withdrawn.

(c) Each defendant shall forthwith serve on each attorney on the service list of attorneys one copy of its answers to interrogatories and documents delivered to counsel in City of Philadelphia v. Emhart Corp., et al, Civil Action No. 14,233, and related Civil Action No. 14,234, Amherst Leasing Corp. v. Emhart Corp., et al, and one copy of such of its answers to interrogatories and such documents as have of the date of this Order been filed or delivered to counsel for plaintiffs in City of New York et al v. Emhart Corp., et al, Civil Action No. 14,235.

(d) Each defendant shall forthwith serve on each attorney on the service list of attorneys one copy of all documents produced by it in response to any civil investigative demand by the Department of Justice and all other documents furnished to the

United States or any agency thereof, whether in response to process or otherwise, in connection with any such investigation or in connection with Civil Action Nos. 13,261, 13,262, 13,263 and 13,264. Defendant Eaton Yale & Towne, Inc. shall forthwith serve on each attorney on the service list of attorneys one copy of the following documents which have been filed in United States v. Eaton Yale & Towne, Inc.:

(i) Defendant's interrogatories;

(ii) The Government's answers to interrogatories;

(iii) The Government's supplemental answers to interrogatories; and

(iv) The Government's request for admissions and documents attached.

(e) Defendants shall forthwith make available for inspection by counsel for plaintiffs and anyone certified by counsel for plaintiffs as employed to assist in preparation for trial, during reasonable hours, all documents to be made available for inspection by them pursuant to the Order dated September 18, 1970 entered in City of Philadelphia v. Emhart Corp., et al, Civil Action No. 14,233, and related Civil Action No. 14,234, Amherst Leasing Corp. v. Emhart Corp., et al, and all documents to be made available to counsel for plaintiffs under Rule 33(c), Fed.R.Civ.P., pursuant to defendants' answers to plaintiffs' interrogatories in City of Philadelphia v. Emhart Corp., et al, Civil Action No. 14,233, and related Civil Action No. 14,234, Amherst Leasing Corp. v. Emhart Corp., et al. Such documents shall be made available at the respective principal places of custody of the defendants. The places of custody shall be:

Eaton Yale & Towne, Inc. - Rye, New York
Emhart Corporation - Berlin, Connecticut
Ilco Corporation - Fitchburg, Massachusetts
Sargent and Company - New Haven, Connecticut

Defendants shall provide accommodations for such inspection, and shall provide for plaintiffs one copy of each document requested to be reproduced for plaintiffs, the cost of which shall be borne by plaintiffs. The costs are defined to consist only of defendants' material and machine costs. Plaintiffs may elect an alternative method of copying, photographing or reproducing documents. If such election is made, costs shall be determined and borne in the same manner as provided above. Alternatively, plaintiffs may elect to provide their own copying, photographing or duplicating equipment and bear their own costs. Plaintiffs shall identify those documents which have been copied, photographed, or reproduced, so that defendants may maintain an accurate record thereof.

(f) If plaintiffs elect to file a supplemental consolidated set of interrogatories and/or supplemental consolidated request for production of documents, such shall be filed on or before July 15, 1971. This date shall be subject to extension necessitated by motions filed pursuant to paragraph 5 below.

4. Each defendant shall answer or otherwise move to each complaint to which answers or motions have not previously been filed within 30 days of the date of this Order, and within 30 days of the effective date of the transfer order in tag-a-long cases.

5. All motions under Rule 37, Fed.R.Civ.P., with respect to responses to discovery already made in City of Philadelphia v. Emhart Corp., et al, Civil Action No. 14,233, and related Civil Action No. 14,234, Amherst Leasing Corp. v. Emhart Corp., et al, shall be filed within 30 days of the entry of this Order.

6. With respect to discovery to be filed, unless otherwise

ordered, the party(ies) served shall have 45 days within which to file objections thereto and shall file answers or other appropriate responses within sixty (60) days after the filing of such requests for discovery or the resolution of all such objections either by the parties or by this Court, whichever is later.

7. An appropriate order substantially identical to Sample Pretrial Order No. 15 - Prevention of Potential Abuse of Class Actions, Manual for Complex and MultiDistrict Litigation, shall be entered, effective as of the date of this Order.

8. An appropriate protective order shall be entered, effective as of the date of this Order.

9. Defendants' Motions for Partial Summary Judgment in City of Philadelphia v. Emhart Corp., et al, Civil Action No. 14,233, and related Civil Action No. 14,234, Amherst Leasing Corp. v. Emhart Corp., et al, and the affidavits in support thereof, are deemed to be filed in all cases. Each defendant shall forthwith serve on each attorney on the service list of attorneys one copy of its above-mentioned Motion for Partial Summary Judgment and affidavits in support thereof. No answer, memorandum of law, affidavit, or other response to defendants' motions for partial summary judgment need be filed by any plaintiff until so ordered by the Court and until a reasonable time after plaintiffs have completed their discovery.

10. After July 1, 1971, and on or before July 15, 1971, plaintiffs shall file with the Court a report as to the progress of their discovery.

J. Blumenfeld
United States District Judge

APRIL 16, 1971

SCHEDULE A

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(23Y)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

IN RE:	:	
	:	
MASTER KEY	:	
ANTITRUST	:	M.D.L. Docket No. 45
LITIGATION	:	All Cases

Deposition of Robert C. Bolfi, taken on behalf of the Defendant Sargent & Company, at the offices of Dechert, Price & Rhoads, 1600 Three Penn Center Plaza, Philadelphia, Pennsylvania, on Wednesday, November 21, 1973, beginning at 10:15 o'clock, a. m.

A. Office buildings such as City Hall, City Hall Annex, various facilities. One of the major problems currently is air conditioning. Many of the old buildings are not air conditioned, and we get involved with it, and normally with air conditioning involvement, there is a modernization element, too.

Q. In your rehabilitation work and improvement-type work that you have described, is there a requirement for builders hardware in that type work?

A. Normally.

Q. What would be the application of the builders hardware? In what type buildings would that be involved?

A. Well, the Municipal Building, the Philadelphia General Hospital, primarily. I guess just conventional office-type hardware -- butts, lock sets, door closures, stops.

Q. And do you have any idea as to the total of your annual requirements for builders hardware as to what they would be for that type of rehabilitation or improvement work?

A. Well, I would say on an average in the jobs the hardware would be maybe a fraction of one per cent to as much as four or five per cent.

On the cost of a bid project, it would depend upon the nature of the project. Sometimes we have a project such as the rearranging of partitions and doors, and then hardware might approach five per cent of the cost.

Q. What would be the type of hardware that would equal a fraction of one per cent?

A. I would think on any complete building, such as a fire station, a health building.

Q. That obviously would not be involved in a parking lot or anything like that.

A. No.

Q. And do you recall any specific job which was a relocation of a door job where it approached four to five per cent?

A. I can only think of some areas in City Hall Annex where we did a complete -- and City Hall -- where we did complete rehabilitation of the Judges' chambers or office space, and there a lot of exterior

and interior door work was done, some of it involving the breaking down of space into other rooms, Judges' chambers, closets. A lot of it is secured with locks.

Q. That's the City Hall job?

A. And then City Hall Annex. I would think the work in those two buildings would approach that figure.

Q. Going back to the discussion which we were having on the letting of these bids, the plans and specifications are prepared by whom generally?

A. Well, either outside consultants or the in-house staff.

Q. Is that on the seventy-thirty breakdown to which you testified earlier?

A. In dollars, yes.

Q. Okay. With reference to in-house over the last, say, eight years, who has been generally in charge of the preparation of these plans and specifications?

A. Well, I guess the Director has the ultimate responsibility, but it filters down to me and then the

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE:	
MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45

PLAINTIFFS' DESIGNATION OF EVIDENCE
WITH RESPECT TO TRIAL OF LIABILITY ISSUES

Pursuant to the discussion at the pretrial conference of September 30, 1974, plaintiffs have set forth the documents, deposition testimony, and witnesses that would be presented upon trial of the liability issues. This designation of evidence follows the outline of the previously filed Summary of Evidence.

Plaintiffs have also filed a Memorandum of Law with respect to the per se illegality of conduct revealed by the documents and testimony, procedure for proof of the conspiracy, and admissibility of evidence to prove the illegal agreements and concerted action.

The nature of the industry, the conspiracy, and its impact upon plaintifrs may be briefly outlined.

The term "contract hardware" refers to builders hardware sold on a contract basis for use in construction of schools, hospitals, office buildings, hotels, and other buildings. Defendants are the only full line manufacturers of contract hardware used for door openings, such as lock sets, latch sets, hinges, exit devices and closers. They sell contract hardware exclusively through authorized dealers, who are allowed to

represent only one defendant. Contract hardware dealers normally do not maintain sufficient inventory for contract hardware jobs; they submit bids on the hardware for a building as a package, and then order the different items when awarded the contract.

A masterkey system refers to an interrelated system of locks designed for a particular building or complex of buildings whereby each lock may be opened by its own distinct key, but all locks in a given system may be opened by a masterkey. Defendants maintain records regarding the keying configurations on all building projects that have masterkey systems with their brand of hardware.

Defendants conspired to fix and maintain the prices of contract hardware at non-competitive levels by meetings, communication, and the exchange of information regarding prices among the highest sales executives of defendants. Moreover, defendants agreed to eliminate competition on existing masterkey systems and, accordingly, prohibited their dealers from selling contract hardware for use on a building or group of buildings having another manufacturer's masterkey system. For this purpose, defendants adopted general sales policies against bidding on another manufacturer's masterkey system.

Defendants supplemented their horizontal conspiracy to protect masterkeys from competition, and to keep prices at artificially high levels, by separate illegal arrangements to allocate masterkey systems and territories among their own dealers and by the prohibition against dealers reselling (or bootlegging) contract hardware to other dealers. Consequently, defendants effectively prevented all competition -- interbrand

and intrabrand -- in the sale of contract hardware for masterkey projects.

Defendants knew their agreements to prevent competition were illegal. Consequently, they sought to conceal the conspiracy by enforcing restraints against dealers on a verbal basis, by arranging for the submission of collusive (or complimentary) bids, and by misrepresenting their sales policies to building owners.

Most dealers readily acquiesced in the restraints on their activities because they, in turn, were protected from interference by other dealers on their own masterkey systems. Defendants, however, closely policed adherence to the industry-wide understanding against competition on masterkey jobs and took the necessary measures to enforce the conspiracy. In the relatively infrequent instances that dealers violated the prohibitions against competing on masterkey jobs, defendants "convinced" them to withdraw their bids; refused to supply them with contract hardware; required them to compensate the protected dealer for lost profits; threatened them with termination or terminated them as authorized contract hardware dealers; and initiated disciplinary action in the ASAHC, the industry's trade association.

Because defendants maintain keying records, they can identify and stop orders from unauthorized dealers for locks and cylinders related to an existing masterkey system. By refusing to sell these items to anyone other than the "protected" dealer, defendants can control which dealer supplies all the contract hardware for a particular project.

As a result of the conspiracy, the defendants maintained their prices for contract hardware above competitive levels, and dealers put artificially high mark-ups on the contract hardware sold for construction projects with masterkey systems. Plaintiffs thus paid far more for contract hardware than the prices that would have prevailed absent defendants' illegal agreements and actions to restrain competition.

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I. THE DEFENDANTS CONSPIRED TOGETHER TO FIX AND MAINTAIN PRICES FOR CONTRACT HARDWARE

The conspiracy among defendants, which was nationwide in scope, included agreements, understandings, meetings and the exchange of information to keep their prices above competitive levels and to prevent dealers from disturbing this pricing structure.

A. Price information was exchanged among defendants to increase and stabilize prices.

There was an understanding among defendants to keep the prices that they charged dealers for contract hardware (list or book prices) artificially high and in line with one another. For this purpose, the highest sales executives of the defendants met to discuss price advances on contract hardware items. In a memorandum to E. J. Parker, president of Emhart, L.C. Booth, vice-president of Corbin, stated:

> Messrs. Giese [president of Sargent], Pantas [vice-president of Yale] and Meyer [president of Ilco] have requested a meeting in your office on Wednesday, April 9, at 10:30 a.m., in connection with the price advance on our lock line.
>
> (Booth Dep. Exh. 15, March 1958)

Other documents record meetings between sales executives of Yale, Corbin and Russwin.

(Booth Dep. Exhs. 13 and 14, April 1958)

Moreover, defendants exchanged price information on a regular basis; this enabled defendants to price their comparable items of contract hardware at the same level.

(Oaks Tr. 101; Witt Tr. 29-30; Yale Tr. 187)

One letter from L.C. Booth, vice-president of Corbin, to John F. Meyer of Lockwood reads:

Some time ago I spoke to you about the fact that on price changes all we received from you is your printed list prices.

We know that in addition to this you send out your special Net Prices, notices to your contract accounts and to your jobbing accounts, and any other "specials" beyond your regular printed list.

We sent to you all price information so that you will be fully informed as to what we are doing.

It would be appreciated if you would have your Pricing Department see that we get full copies of all of your changes so that we can all be on a similar basis.

(Booth Dep. Exh. 2, August 1955)

As a result of this conspiratorial conduct, prices stayed artificially high and a pattern was developed whereby defendants "similarly" increased prices for contract items at intervals during the conspiratorial period.

(Oaks Tr. 102; Witt Tr. 30; Wheatley Dep. Exh. 29, September 1967)

For instance, a Sargent announcement of 7% price increases to Fenestra in 1966 notes: "It is understood that competitive hardware manufacturers will similarly increase prices for the same items by approximately 7/1/66."*/

(Yale Dep. Exh. 39, June 1966)

The fact that the defendants had agreed to keep their prices in line appears from a Sargent memorandum to all contract sales managers, written by vice-president J.B. Duff, regarding the prices charged by Fenestra, a door manufacturer that purchased hardware from Sargent:

---

*/ A document circulated among Emhart's sales executives records a 1962 meeting between Sam Crissman, George Wheatley, Ilco sales executives, and Sam Goldstein, Ilco's contract hardware account in New York City, regarding Ilco's special New York prices for contract hardware items.

(Wheatley Dep. Exh. 3, November 1962)

A very unfortunate thing has happened recently. Under date of November 6, 1961, Fenestra sent a memorandum of all Sales Personnel which has caused a great furore in the contract hardware distributing fraternity. You are probably familiar with this document but in case you are not I am attaching a copy. There are a few things in this that seem to disturb people more than others.

Their statement on Page 3 - "Although major manufacturers had increased prices, Fenestra would not raise prices."

* * *

The price list which accompanied this memorandum is also attached. You will note that in almost every case, the 20% - 46% they refer to on Page 3 nets their products out at approximately 25% higher than a Sargent dealer can buy the same product directly from us. It is quite apparent from this that the Fenestra distributor is not in a position to give the local contract hardware people any great competition in their hardware business.

I do not want you to pass this information along to anyone. I felt it best that you have the whole story so that you would be prepared to defend Sargent's position if this becomes necessary. I have seen some letters from our competitors written to the Contract Hardware Association where they are weeping bitter tears over Sargent's part in this vicious plot.

(Gray Dep. Exh. 43, January 1962)

B. Defendants met on a monthly basis to prevent and police cutting of prices.

The defendants reviewed the pricing of contract hardware and effectively controlled price-cutting by dealers through monthly meetings attended by representatives of Emhart (Corbin and Russwin), Sargent, Ilco and Yale. The regular participants were Leo Pantas and Fred Dunning (Yale); J. B. Duff, Herman Giese and Forbes Sargent (Sargent); John Meyer and George Wheatley (Ilco); William Ziegenhein, James Parker and L. Curtis Booth (Emhart).

(Booth Tr. 17; Pantas Tr. 23-24)

These meetings were held at the Yale Club in New York under the auspices of the Builders Hardware Manufacturers Association (BHMA). L. Curtis Booth testified to the purposes of these meetings as follows:

Q Did you discuss general price levels for hardware, finished hardware?

A Not as such. We always would receive at our plants reports of prices on specific buildings coming in from all over the country to us. And as we would chart those it could develop a pattern showing that in one section of the country or another somebody was perhaps not quoting up to their full published prices.

Q Did you have occasion to exchange pricing information with any of these representatives of other hardware manufacturers?

A Well, to the extent that I have mentioned before as a developing pattern showing that one or the other might be cutting prices in an area. We tried to take them to task for it to get it straightened out.

* * *

A [E]ach of our competitors had our price book and we had theirs.

Q And whenever there was a change in the prices in your price book you would inform your competitor?

A Yes, the changes would go to them.

(Booth Tr. 18)

Other documentary evidence discloses the exchange of information among defendants to keep prices charged by their dealers artificially high. For instance, in a letter dated March 18, 1965 McCulloch, general sales manager and vice-president -- sales of Russwin, criticized the southern sales manager, Glenn Wiley, for cutting prices "on a couple of jobs where we had agreed here in New Britain for certain political reasons not to cut prices."

(Yale Dep. Exh. 25, March 1965)

In another memorandum, McCulloch requested W. J. Ziegenhein, executive vice-president of Emhart, to talk to J. B. Duff (Sargent) and "find out if they would make sure that Fenestra [a Sargent customer] in selling the Sargent hardware sell it above their book price. For if they're not, this then will cause Ceco [an Emhart customer] possibly to sell our hardware under our book price and then you know we can be in trouble."

(Yale Dep. Exh. 27, December 1962)

An internal Sargent memorandum reads: "As you know it is essential that we control prices from New Haven."

(Rhynedance Dep. Exh. 24, June 1965)

J. B. Duff wrote the Sargent sales managers: "There is nothing more important today than the effort to stabilize the price situation."

(Gray Dep. Exh. 10, February 1959)

C. The maintenance of price structures.

The defendants adhered to certain methods of pricing in order to keep prices high. In a memorandum from Eli Yale, sales manager of Sargent, advising his regional sales managers not to give price concessions, Yale stated that "it is imperative that we keep the price structure under as rigid control as possible" and "it is of the utmost importance not to upset any pattern of operation which can be interpreted by our competitors."

(Gray Dep. Exh. 12, Jan. 1962)

In this connection, W.C. Bierds, price supervisor of Emhart, advised Tom O'Neill, general sales manager of Russwin, that all manufacturers follow the same practice with respect to prices of locksets with wrought knobs and cast roses or vice versa. Bierds stated:

> This situation, as you must know, has been strictly adhered to in methods of pricing by all manufacturers, and it would upset our pricing structure if we were to deviate and throughout the years we have kept our hands clean in this matter.
>
> (O'Neill Dep. Exh. 8, April 1965)

D. The price fixing conspiracy was implemented by arrangements between defendants' salesmen.

Documents reveal that sales representatives for defendants exchanged information regarding particular projects or customers to maintain price levels. For instance, a Sargent sales memorandum relates that the Corbin and Sargent salesmen conferred together to raise the prices of locksets from $11 to $12 per set in sales to the Holiday Inns.

(S-399, January 1962)

II. THE DEFENDANTS AGREED AMONG THEMSELVES TO ELIMINATE COMPETITION ON EXISTING MASTER KEY SYSTEMS

A. The industry-wide understanding against breaking masterkey systems was adopted and enforced to prevent price competition among dealers.

Correspondence and internal corporate memoranda prepared during the conspiracy establish an industry-wide agreement among defendants against bidding on another manufacturer's masterkey system, which was implemented throughout the country, strictly enforced, and carefully concealed. Defendants secured adherence of distributors to this policy or put them out of business. As McCulloch explained to Russwin's Chicago area sales manager, distributors were not allowed even to submit quotes to supply their brand of contract hardware for an extension to another manufacturer's masterkey system:

> [I]t is an industry policy, you might say, and if one of the division's dealers deliberately breaks another masterkey system, we are well within out rights to withdraw our line from such a dealer or even if he doesn't break the system, if he bids on such a system.
>
> (McCulloch Dep. Exh. 31, Feb. 1965)

The defendants euphemistically prohibited the "breaking of a masterkey system." In a technical sense, the term "breaking" means to furnish another brand of contract hardware to an existing masterkey system so that the new locks cannot be operated with the same set of keys. But, as defined and enforced by defendants, the policy against breaking a masterkey system kept distributors from offering to sell contract hardware for someone else's masterkey system, even though the dealer intended to furnish cylinders and locksets from the original manufacturer or otherwise compatible with the existing system. Nor did it matter that the owner or architect did not care to extend the existing masterkey system with the same brand of contract hardware, and wanted a lower price

through competition on the extension, rather than the supposed convenience of having only one masterkey. Defendants' conspiracy was aimed at preventing just such price competition. As McCulloch stressed in 1965 to a joint meeting of the industry's trade associations, the ASAHC and BHMA:

> The system is "broken" when a low bid from a competitor forces the owner through economic pressure to establish a new system.
>
> (AS 1189, October 1965)

Moreover, defendants prohibited their distributors from offering to extend masterkey systems by supplying the contract hardware of another manufacturer, rather than their own. For example, McCulloch advised a Russwin salesman in 1963 that it would be necessary to terminate a dealer for "unethical tactics and practically breaking a key system" because the dealer purchased Corbin hardware from someone other than the dealer to whom the masterkey "belonged." McCulloch was emphatic:

> You know our policy on this. Even though they actually haven't broken a P & F Corbin system they bid into some and this is against our policy.
>
> (McCulloch Dep. Exh. 32, October 1963)

Defendants are the only full line manufacturers of contract hardware. In return for the protection against competition on masterkey projects (and assignment of exclusive sales territories), defendants required that their dealers not carry any other full line manufacturer's hardware.

> (Gray Dep. Exh. 1, April 1962;
> Gray Dep. Exh. 2, April 1963;
> Gray Dep. Exh. 6, August 1965;
> Salaman Dep. Exh. 9, June 1961;
> Salaman Dep. Exh. 11, January 1959;
> Wiley Dep. Exh. 47, November 1963)

Defendants enforced their restrictions against competition in the sale of contract hardware for any construction that involved additions to structures with masterkey systems, or new buildings that could be tied into an existing masterkey system, even though the owner's specifications did not require the continuation of a masterkey system. As one example, the State of Mississippi sought to obtain competition on masterkey work by not permitting specifications on public construction to read "keyed to an existing system." But Russwin still insisted that "dealers protect each others masterkeys." In a 1962 memorandum to Bauman, general sales manager of Corbin, McCulloch stressed:

> It would seem to me that even though it isn't in a spec, and if people know it is a bonafide key system, they should honor each other.
>
> (McCulloch Dep. Exh. 35, April 1962)

McCulloch advised Bauman that he told Russwin's southern sales manager, "I'd rather lose the job to Y & T [Yale & Towne] than to be instigator of breaking key system."

(McCulloch Dep. Exh. 34, March 1962)

In another incident, the Corbin sales manager, T.A. McGuiness, asked the Russwin sales manager, W.C. Lichtenfels, to prevent Russwin dealers from bidding on an addition to the Myrtue Memorial Hospital in Harlan, Iowa, despite the fact that the specifications did not require Corbin. Lichtenfels thereupon "called Deady [midwest sales manager] and asked to have Curries not bid it."

(Deady Dep. Exhs. 14 and 15, January 1965)

In practical terms, these restrictive agreements meant that once a building in a school district had a particular manufacturer's hardware, only the distributor who originally furnished

the masterkey system was allowed to sell contract hardware for additional buildings constructed anywhere in the school district.

(Bauman Tr. 165)

For instance, the existing Sargent masterkey system in the Topeka, Kansas school district meant that no one besides the protected Sargent dealer could sell contract hardware for any school there. When a Yale dealer submitted the low bid to supply hardware for a new elementary school, Sargent put a "stop" on any order for that masterkey system and advised its dealers "not to accept the order for the locks."

(Yale Dep. Exhs. 4 and 5, April 1963)

The evidence leaves no doubt that defendants eliminated competition on masterkey jobs to keep contract hardware prices at artificially high levels, not to protect the owner and the "security" of his masterkey system. As acknowledged in a memorandum circulated among Sargent's sales executives, industry-wide adherence to the policy against competition was pursued to maintain artificially high and non-competitive prices for contract hardware:

> In this regard we cannot tolerate a Sargent distributor bidding a job specifically laid down to another manufacturer's existing masterkey, any more than we can tolerate another manufacturer's distributor bidding an existing Sargent masterkey. Such unethical bidding not only results in a depressed selling market, but produces a retaliatory market having a far reaching effect.
>
> (Gray Dep. Exh. 51, January 1964)

This policy against competition is boldly set forth in Russwin and Corbin sales manuals with respect to "Breaking Master Key Systems":

> Over the long pull the deliberate breaking of any manufacturer's key system by any dealer is not a sound policy. Every manufacturer and every dealer has the same privilege and if every one pursued

this policy, master key systems as such would have no value to the dealer or to us as manufacturers.

(Lichtenfels Dep. Exh. 31, August 1969; Bauman Dep. Exhs. 78-A and B, April 1960; Bauman Dep. Exhs. 79-A and B, August 1963)

Taking a Russwin dealer to task for bootlegging Corbin hardware, McCulloch explained the "ethics in our industry and ... the ethics of the American Society of Architectural Hardware Consultants": a dealer is "entitled" to masterkey jobs "without having outside competition." The sale of hardware to infringe on jobs of another manufacturer "can be a two edged sword and can be turned on you in the same manner by your Corbin competitor or let's broaden it even further, Yale, Lockwood and Sargent...."

(Bauman Dep. Exh. 18, March 1963)

McCulloch cautioned that interference with a masterkeyed job "just isn't right whether it's Russell & Erwin, Corbin, Sargent, Yale, etc."

(Bauman Dep. Exh. 19, Apr. 1963)

Defendants repeatedly advised their salesmen and dealers against competing on jobs reserved for other manufacturers, pointing out that the restrictions operated to everyone's financial benefit and that "the shoe can be on the other foot someday."

(E-8359: Memorandum from McCulloch, Aug. 1[illegible]2)

McCulloch explained to a dealer that there was an "industry-accepted policy" that dealers not bid on another manufacturer's masterkey system and suggested that the dealer "refrain from bidding on existing masterkey systems, even though you might be bidding it innocently and shall I say 'cooperating'."

(McCulloch Dep. Exh. 44-A, June 196[illegible]

Roy Salaman, former western sales manager for Sargent, testified that "the builders hardware industry generally respect a competitor's master key system"

(Tr. 100-101)

and that it was "the practice in the hardware industry for manufacturers not to break competitor's master key systems."
(Tr. 103)

B. The industry-wide agreement not to compete on master-key jobs was known to be unlawful.

The industry-wide restriction of competition on master-key jobs, maintenance of inflated prices through customer and job allocations, and enforcement of these policies were intentional violations of the antitrust laws. Defendants acknowledged this in contemporaneous memoranda which reveal how defendants deliberately ignored the antitrust laws. Correspondence of McCulloch, a key figure in the policing of the industry-wide price-fixing, job allocation and restrictive sales policies, tells part of the story:

> Everyone understands our sales policy, I am sure, regarding continuation of masterkey systems that have been established by dealers other than themselves. We, of course, can't enforce this legally because of our friend, Kennedy. However, our policy is that dealers live and let live as far as existing key systems are concerned.
>
> (McCulloch Dep. Exh. 47, Jan. 1963)

> Legally, we can't force another dealer not to bid another man's key system. We have had this up with our lawyers many times. Uncle Sam frowns on this policy and calls it collusion and a monopoly, so our policy is based on dealers having good will towards each other and trying to work together as I know you do.
>
> (McCulloch Dep. Exh. 48, June 1961)

> Basically, our policy is a moral policy and one that, I'm afraid, Uncle Sam wouldn't uphold us in a court of law about restriction of territories. This word "franchise" that we all use is fine sounding but unless we really mean it deep inside us it doesn't mean a thing. This goes for Lockwood as well as anyone else. What we are trying to do and I'm sure Lockwood is, too, is to get people to think right, live together, and work together.
>
> (McCulloch Dep. Exh. 49, July 1961)

Because defendants knew that their conduct was illegal, they took great pains to leave no evidence of their collusion and agreements in restraint of trade. Dave Oaks, a former salesman for both Russwin and Sargent, confessed that defendants were careful to enforce sales policy against distributors verbally because they "understood it to be illegal."

(Oaks Tr. 32)

In this connection, McCulloch told his sales personnel that Emhart's counsel had advised that the prohibition against bidding on another dealer's masterkey job was "pretty collusive" so "we don't believe we can put this into writing. If we say it, then that's one thing but in writing of course, it's another."

(McCulloch Dep. Exh. 50, April 1964)

On another occasion McCulloch advised that allocation of masterkeyed jobs "should all be done by telephone or word-of-mouth in a visit."

(Wiley Dep. Exh. 13, July 1961)

Tom O'Neill, a successor to McCulloch as Russwin's general sales manager, expressed the same apprehension with regard to allocation of masterkeyed jobs by the manufacturers:

> Generally speaking it is not well to put this sort of thing in writing no matter how it is worded.... Let's watch out for the use of the word "agree" when there are more than two parties involved.... A very dangerous word. When it comes to MKS we don't ask their agreement to our policy. We set it and we enforce it with or without agreement.

(O'Neill Dep. Exh. 18, August 1965)

Similarly, George Rhynedance, regional sales manager for Sargent, cautioned his salesmen with respect to the refusal to fill orders of a distributor to prevent bootlegging to a Corbin account:

> Do not put this in writing, but handle this on a verbal basis....

(Rhynedance Dep. Exh. 11, April 196

In this connection, Eli Yale, general sales manager of Sargent, warned his regional sales manager, Roy Salaman, not to include conversations with dealers in his weekly reports -- because of "problems such as recently experienced in California." These "problems" were criminal and civil actions filed against the defendants and distributors by Richard Cure, a terminated Ilco dealer, and the State of California.

(Yale Dep. Exh. 2, April 1964)

C. The agreement to eliminate competition on masterkey projects operated as a "horizontal" conspiracy among defendants.

The horizontal nature of defendants' restrictive agreement is apparent; it would not constitute "breaking a master key system" for one Russwin dealer to sell hardware to extend a masterkey system orginally sold by another Russwin dealer. By definition, the term "breaking a master key system" refers to the sale of a different brand of contract hardware for an addition to an existing masterkey system.*/

As a matter of fact, Emhart's assistant general counsel, Sherman Carpenter, interpreted the company's sales manuals as reflecting a horizontal agreement among manufacturers. In response to an inquiry from Gene Deady, midwest sales manager, about the meaning of the standard practice against breaking masterkey systems, Carpenter wrote to McCulloch:

> This standard practice deals essentially with the problems Russwin, and more particularly a Russwin

*/ As discussed later, defendants reinforced their horizontal agreement to eliminate competition on masterkey jobs by allocating existing masterkey systems among their own distributors and prohibiting distributors from bidding on masterkey systems they had not established or been assigned.

dealer, might have with a Corbin dealer or a dealer of some other manufacturer. (Emphasis added)

(Lichtenfels Dep. Exh. 34-A, March 1962)

McCulloch sent Carpenter's memorandum to Deady with the notation:

This deals with Russwin dealer vs. Corbin dealer and/or the world, not with Russwin dealer vs. Russwin dealer in the same territory.

(Lichtenfels Dep. Exh. 34-D, March 1962)

D. Defendants restrained their contract hardware distributors from competing on masterkey systems of other manufacturers.

Each defendant had general sales policies which prohibited dealers from bidding on another manufacturer's masterkey system. The record contains written directions circulated by defendants to all sales personnel and dealers requiring adherence to the general policy, as well as specific threats to disobedient dealers and assurances to protected dealers.

Emhart Corporation

The sales manuals of Russwin and Corbin throughout the conspiratorial period stressed the general industry prohibition against breaking masterkey systems. In 1957, W.J. Ziegenhein, vice-president of Russwin, wrote to all salesmen asking them to make certain "that our dealers refrain from quoting" jobs with another manufacturer's masterkey system:

You are all thoroughly familiar with our policy as it relates to efforts made to break any manufacturer's masterkey system. This is extremely bad practice not only from the moral standpoint but it can work in reverse as well and give the competitor reason to break our system.

* * *

> In specific instances where this matter is brought to our attention, it will be necessary for us to refuse orders for locks....
>
> (Lichtenfels Dep. Exh. 30, March 1957)

The sales manuals prohibited the "breaking of master-key systems" by any dealer and provided that "each supervisor will be held accountable for adherence to and strict enforcement of standard practice" with respect to "breaking masterkey systems." Russwin further warned:

> It is now emphatically stated that it is your responsibility to stop such practices yourself, as well as to stop any dealer who is now or in the future making efforts to break the other dealer's master key system. If you are not successful in stopping the dealer, then you must report it to the sales manager for further action from New Britain.
>
> It is your responsibility to thoroughly discuss this policy matter with every one of your dealers and be sure they completely understand this policy will be enforced.
>
> (Lichtenfels Dep. Exh. 31, August 1959)

As revised in 1965 by McCulloch, the Russwin policy against breaking masterkey systems read, in part:

> It is your responsibility to always practice this policy personally and to make certain that all your distributors and their personnel are fully informed of this policy at all times. If you have reason to believe a distributor has or is attempting to violate this policy and you have clearly pointed out to him the policy, you must report such a situation without fail to your manager and the home office. If you don't and an investigation clearly indicates that you were aware of such a violation and took no action, this could be cause for dismissal.
>
> (Lichtenfels Dep. Exh. 32, October 1965)

Carl Bauman reiterated Corbin's policy to protect "established masterkey systems" in letters to all salesmen and to all contract hardware dealers. By letter "to all contract

customers," Bauman warned against the dangers of competition:

> It appears obvious to us that many dealers are not realizing the effect that promiscuous breaking of established key systems may have on the security of a particular building. Certainly, this can always be a two-edged sword whereby one dealer breaking another dealer's system may be subjected to the same medicine at a later date.
>
> * * *
>
> Why do people try to break masterkey systems?
>
> 1 - By forgetting to follow the Golden Rule or the ethics of the Code of the Society, which clearly spells out the intent of masterkey systems and what constitutes breaking such a system.
>
> (Bauman Dep. Exhs. 81-A and B, November 1963)

Bauman sent a copy of the foregoing letter to all salesmen with a cover letter noting that "our Standard Practice clearly outlines what our policy is on masterkey systems, and you, as our representative, should adhere to this policy at all times." The danger of competition was explained in the following language:

> I am sure we all recognize that the old saying, "who casts the first stone" can quite frequently apply to situations that develop on masterkey systems. It is far better to maintain the status quo in such instances than to be the "bull in the china shop" and raise doubts in the minds of individuals when it pertains to a valid masterkey system.
>
> (Bauman Dep. Exh. 80, November 1963)

Emhart's internal memoranda leave no doubt of its commitment to the illegal restraints.

(i) As early as 1951, Corbin's "N.Y. Office Sales Policy" provided: "We will not under any conditions make a quotation where the specifications require a continuation of another manufacturer's master key system."

(Parsons Dep. Exh. 5, September 1951)

(ii) Corbin's vice-president Booth stated that additions "to an existing master key system of some other manufacturer" should not be handled by Corbin.

(Booth Dep. Exh. 3, November 1956)

(iii) Corbin's sales manager Parsons instructed salesmen that he felt "very strongly about breaking a masterkey system, whether it be ours or somebody elses."

(Parsons Dep. Exh. 12, March 1962)

Sargent & Company

Sargent promulgated and enforced its sales policy in line with the illegal agreement among manufacturers not to compete on masterkey systems. A sales letter from J.B. Duff, vice-president, to all regional sales managers, begins:

> There has been considerable trouble about the breaking of masterkey systems. It is the policy of Sargent & Company to respect bonafide masterkey systems of competitors. (Emphasis added)
>
> (Gray Dep. Exh. 9, August 1959)

Sargent restrained its dealers from bidding masterkey systems of other manufacturers to protect its own jobs from competition. As Rhynedance wrote to a Sargent salesman:

> You sent me a note with this #3 bidding report indicating that Corbin was foolish to go down this low on their own masterkey, however, I think the obvious question is what are we doing bidding a Corbin masterkey. They obviously find it necessary in order to protect their own masterkey systems.
>
> You realize, of course, that this kind of bidding only invites retaliation. I would like to have some explanation of why our customer bid into a competitor's masterkey system.
>
> (Rhynedance Dep. Exh. 9, March 1967)

New dealers were instructed by salesmen that Sargent "requires complete adherence to our sales and distribution policies such as never bid on a masterkey that was established by someone else."

(Yale Dep. Exh. 3-B, January 1964)

The restriction against bidding on an existing masterkey system applied to both private and public work, as Roy Salaman, western

sales manager, advised a dealer:

> ... the builder's hardware industry in general has tried to respect the other fellow's master key systems. This can be done without antagonizing the contractor. He could be quoted a price [i.e., a complimentary bid] and the distributor need not put in a lot of unproductive work in figuring the job. In this cooperative way peace is kept in the family, the owner has master key convenience and no one need be antagonized.
>
> As to this being a government job, master key systems can still be maintained.... Few public jobs today do not have some government money in them. If the policy you have taken in this case were followed by all distributors the industry would be in a sorry position insofar as master key protection is concerned.
>
> (Salaman Dep. Exh. 17, May 1962)

Ilco Corporation

The documents show Ilco's adherence to the illegal agreement, or so-called "code of ethics" for the contract hardware industry. Earl Materne, national sales manager, wrote to his sales force in 1966: "A very eminent segment of this code of ethics is the recognition of the rights of others and the importance of conscientiously abiding by non-infringement of marketing areas of other associate contract distributors."

> It is most important -- from both a moral and an economic (from which all such codes of ethics are derived) standpoint that everyone, most particularly those in this company, observe both by letter and spirit this code of ethics -- and make it their personal responsibility to see that it is not subverted by their direct action or inaction -- for one is just as morally unacceptable as the other.
>
> (Materne Dep. Exh. 9, January 1966)

In this connection, George Wheatley, the contract hardware product manager for Ilco, complained to representatives of Ilco's competitors at a chapter meeting of the trade association (ASAHC) about "the unhealthy situation existing at the present

time, relative to prices and also on the matter of breaking master key systems."

(Wheatley Dep. Exh. 1, February 1959)

Ilco's restraints were effective. For instance, when bids were solicited for the Albert Einstein School of Medicine in New York, Ilco refused to compete. George Newmier, the local sales representative, wrote to Crissman, vice-president of Ilco, and Materne:

> ... all jobs coming out the Yeshiva University have been subject to an existing Sargent & Co. grand master key system and therefore untouchable.
>
> (Crissman Dep. Exh. 10, April 1965)

Eaton Corporation ("Yale")

Yale participated in the industry-wide prohibition against supplying additions to masterkey systems of another manufacturer. As early as 1932, Walter Allen, Yale & Towne's president (together with sales executives of Corbin, Russwin and Sargent), admitted, that:

> ... for many years, trade ethics have debarred most of the principal manufacturers from competing in the furnishing of the finishing hardware ... where an existing key system not their own was pecified for extension.
>
> (Pantas Dep. Exh. 3, October 1963)

Accordingly, Yale routinely declined to bid on jobs specified as additions to competitors' masterkey systems. For example, in 1964 Yale's vice-president, Leo Pantas, declined to sell hardware for an addition to a Sargent grand masterkey system.

(Pantas Dep. Exh. 11, April 1964)

Yale distributors took the same position:

> Q Did Yale ever receive assurances from any of its distributors that they would not bid on projects specified as additions to a competitor's master key system?

A Well, without fail, everyone who wrote a letter complaining said I would never do a thing like that.

(Talgo Tr. 118)

Yale fully appreciated that its competitors would reciprocate by not bidding Yale masterkey additions. Thus, James D. Young, general sales manager, stated in 1962 to the contract account manager that "there are many jobs Yale distributors secure as the result of a Yale master key system, where there is no competition."

(Pantas Dep. Exh. 15, March 1962)

In the same vein, Yale's Jackson, Mississippi account wrote to Chuck Moody in Yale's order department in 1965 regarding an addition to Yale's masterkey system at an elementary school:

> The addition is not a big one, but we do need the master key information to insert in the schedule to make sure our competitors don't quote on this Master key system.
>
> (Talgo Dep. Exh. 8, December 1965)

Similarly, Los Angeles Hardware Co. told Harry Talgo, marketing manager for contract hardware, that the 1963 addition to a Yale masterkey system at the Los Angeles County General Hospital would be non-competitive:

> Ethical practices of most manufacturers are such that we have no fear that there will be bids from any other distributor of a major line.
>
> (Talgo Dep. Exh. 29, May 1963)

The conspiracy embraced not only defendants, but Schlage Lock Company, as well. In response to an inquiry from Bauman, a Corbin regional sales manager reported:

> Our activities in Richmond in regard to Schlage masterkey systems previously established has been the same as anywhere else. We have never tried to break into anyone's masterkey system.
>
> (Parsons Dep. Exh. 8, September 1961)

Schlage, of course, reciprocated by not competing on defendants' masterkey systems. On one occasion, the agreement appeared to break down for McCulloch requested O'Neill (with a copy to Ziegenhein) to document instances where Schlage tried to break Russwin masterkey systems so that McCulloch could raise this issue at the next trade association meeting. McCulloch's instructions read:

> Please get for me and have in my hands before I leave for the Miami Convention, which is October 13th, any job that the Schlage Lock Company have either taken or attempted to take where bonafide Russwin Key Systems were in effect. I would like to have the name of the job and the locality. This is very important ... we want actual cases not suppositions or border line cases.
>
> (O'Neill Dep. Exh. 13, September 1961)

E. Defendants allocated particular customers and jobs.

In addition to their general agreement and policies, the evidence discloses more specific arrangements amongst the defendants to limit competition by their dealers on masterkey work. One such meeting occurred in 1961, which was attended by Harry Talgo, Yale's regional sales manager; Glenn Wiley, Russwin's southern sales manager; Eli Yale, Sargent's sales manager; and "local representatives of Yale, Corbin, Russwin, Schlage and Sargent." Eli Yale reported that he

> ... attended a contract distributors' meeting in Durham, North Carolina.
>
> Almost 100% of the Contract Distributors in North Carolina attended, as did representatives of the major Lock Manufacturers. This included the local representatives of Yale, Corbin, Russwin, Schlage and Sargent.
>
> In addition to myself the district manager of R&E attended and also Harry Talgo from Yale's New York office.
>
> The distributors held the meeting to discuss with the manufacturers, the increasing problem of unqualified dealers bidding on contract work.
>
> (Yale Dep. Exh. 26, March 1961)

The meeting was part of a "program" to restrict sales of contract hardware to dealers who were members of the ASAHC and would abide by the "code of ethics" against breaking masterkey systems. As Yale explained:

> Q At the meeting in Durham, North Carolina, described in your memorandum of March 10, 1961, didn't the contract hardware distributors request the manufacturers present -- Yale, Corbin, Russwin, Schlage and Sargent -- not to sell contract hardware through distributors other than the established contract hardware distributors?
>
> A The request and discussion at the meeting was part of a program that this group had in establishing or upgrading, so to speak, the responsibility of the ASAHC member. And the program here was to try and get the architects to write in their hardware specifications that the only hardware dealers or distributors that would be allowed to bid on their project must have a full time AHC in their employ.
>
> On the other hand, they were asking the manufacturers here not to sell any distributors or sell to any new distributors that didn't have a qualified AHC on their staff. And this happened to be somewhat of a peculiar situation to the North Carolina area because there were so many small hardware jobbers and old hardware companies in the area.
>
> (Yale Tr. 199-200)

The documents obtained from defendants record numerous instances of collusion or "cooperation" among the defendants and dealers of other manufacturers on particular jobs.

(1) McCulloch explained the rationale for "understandings" with competitors in a letter to a Texas dealer:

> I also did not mean that you should work out a collusive arrangement with the competition, but merely an understanding such as they have in Los Angeles. I don't agree with you.... I think you do have to throw the competition a fish now and then.
>
> You also mentioned that you don't think that net prices will ever work in Dallas. I'm inclined to agree with you that they are probably not working in Dallas at the present time and again I say, this may be because of the influence of the Billings

BEST COPY AVAILABLE

Corporation. Naturally, we expect tough competition when a new firm goes into business, it is natural for everyone to try to keep them out, but for you to say, that net prices will never work, I think you are way off. The only way they will work is for you to cooperate (now and then) this is the point we are trying to get at.

You know how terrible the New York market was for years, well even their market is straightening out and that has been one of the worst places in the United States. So things can be worked out if people have understandings and are willing to be reasonable. */

(McCulloch Dep. Exh. 12, December 1962)

(2) Ilco prohibited one of its dealers from bidding in territory assigned to a Russwin dealer. In a telephone call on January 17, 1962, Robert Hicks, Ilco's western sales manager, warned his account Cure & Company not to bid on school construction in the area reserved for Russwin's Los Angeles dealer (Ventura County, California). Richard Cure argued that he had "no problem in getting [Lockwood hardware] approved," but Hicks responded:

HICKS: Well, Dick, I think this is just like ground we've been all over. It is in Ventura County and it is a specification that these other people have written in their material, and, ah, if we take the job from up there, then we're going to lose a job down here. I don't see any particular reasoning to it.

CURE: Well, I just wanted to know whether it made any difference whether we had the security key system in that school district or not.

HICKS: No, they're not, they're not particularly interested in the key system and according to my way of complaint when they got into the Ventura area, we're pretty well regulated by the way the people play down here.

CURE: Yea.

HICKS: We have these associations.

(Hicks Dep. Exh. 3, January 1962)

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*/ It should be noted that the "understanding" in Los Angeles resulted in civil and criminal suits against defendants.

(3) On June 18, 1970, Glenn Wiley, southern sales manager, reported to Tom O'Neill, vice-president of Russwin:

> Since 1958, we and Sargent have had a joint key system in the Alachua County (Gainesville, Fla.) school system.
>
> In November of 1969, Jr. & Sr. High School A and Jr. & Sr. High School G were bid and the specs (Russwin) stated they were to be set to either the existing Russwin or Sgt. County school system. (Factory order #41812-1958).
>
> We had this deal set up, the Sgt. account was to handle the metal and Misc. materials and we were to furnish the hardware.
>
> (O'Neill Dep. Exh. 6)

(4) On July 14, 1969, Wiley reported to O'Neill:

> Attached are 6 orders from T & G. With reference only to T8676, Gilchrist Training School, this is a new GMK system. We thought we had this one set up. The Sgt. dealer went along, but Knight & Wall, Tampa-Yale came in at the last minute, $7,000 low.
>
> (Wiley Dep. Exh. 20)

(5) McCulloch instructed Gene Deady, then midwest sales manager, to prevent a dealer from bidding on work unless cleared through the Russwin sales executives to make certain the bid did not upset "arrangements" among defendants. The particular situation giving rise to McCulloch's letter involved the Russwin dealer bidding (at low mark-up) on a job that everyone had agreed to give the local Ilco dealer. As McCulloch stated:

> This job apparently was set up for Howell [Lockwood dealer] and Morrison [Hines Lumber] was going to cooperate because he was to get something in the future. You know how these things are and I think we have to recognize these things. So does S & S.
>
> (McCulloch Dep. Exh. 14, March 1962)

(6) By letter of May 7, 1959, McCulloch cautioned a Russwin dealer:

> As you know, there has always been an unwritten law in the Tampa - St. Pete area that dealers [of all manufacturers] in both areas do not bid

in the other dealer's area. Remember you are new, Dick, and I wouldn't proceed to hastily in view of this as you could get possibly hurt.

(McCulloch Dep. Exh. 16; McCulloch Tr. 133)

(7) In a 1956 memorandum, Corbin's vice-president L.C. Booth related that he had attended a meeting with distributors for other manufacturers for the purpose of ending price competition:

> We discussed the New York situation in considerable detail, expressing our dissatisfaction with the method of allocating jobs, and suggesting in place of it, that the New York Dealers Association work on the basis of letting the man who writes the specifications have the job.
>
> This sort of thing is working very statisfactorily in Los Angeles. It eliminates all of the problems in any other system and puts the emphasis on working with the architect and selling at the specification level, rather than working with the contractor and selling at the price level....
>
> * * *
>
> It should eliminate all of the heart-breaking work of trying to sell jobs in a cut-price market, where you cannot believe what a contractor tells you or what your competition tells you.
>
> This is not going to happen overnight and will only work if all of the dealers involved, as well as the manufacturers, go at the thing in good faith.
>
> I think you should keep this letter very much out of sight, as it is of a confidential nature.
>
> (Booth Dep. Exh. 4, June 1956)

III. ENFORCEMENT OF THE ILLEGAL AGREEMENTS AGAINST BIDDING ON ANOTHER MANUFACTURER'S MASTERKEY JOB

A. Defendants acted together to keep their distributors from competing on masterkey work.

Sales executives of the defendants communicated directly with one another to report price-cutting by distributors or infringement upon "protected" work. In response to such complaints defendants took concerted action to restrain the offending distributor or prevent further disruption. Depending upon the degree of discipline needed, defendants would "persuade" the distributor to stay in line, force him to compensate the protected distributor for the job taken, refuse to fill his orders, threaten to terminate him and actually terminate him as a distributor. This section summarizes enforcement incidents that involved concerted action among defendants.*/

1. The Park Forest School incident.

By letter of May 11, 1965 to Rhynedance (Sargent), Standard Equipment & Supply Corporation (a Sargent distributor) complained about competition from a Russwin distributor on two elementary schools in Illinois and stated:

> We hope that you can stop any leaks that may exist in the raiding of Masterkey system.
>
> (McCulloch Dep. Exh. 51-A)

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*/ When special circumstances caused dealers to infringe on masterkey projects, defendants sought an explanation and reassured one another it was an exception. For instance, W.J. Healy, Chicago sales manager for Sargent, reported to Eli Yale with regard to a masterkey extension: "Thought you would like to have the details on this job as you may get a rumble from your 'friends' in New Britain ... R & E [Russwin]." He then explained that the local Sargent dealer, Ken Lee, had originally not bid the job, even though the specifications "were wide open," but the contractor (who was a friend) had received only one high bid and requested a quote from Ken Lee. Consequently, Ken Lee gave the contractor a price with a one-third mark-up over cost.

(Healy Dep. Exh. 1, June 1966)

Copies of this letter were directed to Eli Yale and J.B. Duff, the highest sales executives at Sargent. Eli Yale, in turn, sent a copy of the letter to McCulloch (Russwin) with the notation: "Ed, can you find out anything on this? Eli."

(McCulloch Dep. Exh. 51-A, May 1965)

Shortly thereafter, McCulloch complied by writing to William Maher, Russwin's Chicago area manager, with a "Blind Copy to: Mr. Eli Yale," advising Maher to prevent the Russwin distributor from competing on the Sargent jobs:

> I have heard through the grapeveine that it is alleged that Edward Hines Lumber Company either is breaking a Sargent master key or in some manner is furnishing Sargent locks and closers on two schools, known as the Richton Square School at Richton, Illinois and the Illinois School at Park Forest, Illinois.
>
> You know our very definite feeling about the breaking of master key systems no matter whose master key system is involved. Without indicating to our dealer that we are playing detective, I would like to have you investigate these two jobs and see what you can find out about them and advise me.

(McCulloch Dep. Exh. 51-B, June 1965)

Maher gave McCulloch a report on the situation, stressing that it was "not the intention of Hines [the Russwin account] to break the existing keys of Sargent."

(McCulloch Dep. Exh. 51-C, June 1965)

Sargent's internal reaction to this incident throws additional light on the nature of the conspiracy. Rhynedance forwarded Standard Equipment's complaint to the order department with instructions not to sell the hardware to any other firm.

(Yale Dep. Exh. 18, May 1965)

Rhynedance then advised Standard Equipment that:

> [I]f they attempt to break the masterkey, then I would say that they are in violation of the Code of Ethics, of the American Society [of

> Architectural Hardware Consultants] and could be brought before the Ethical Practices Committee in this regard.... We had a case recently where a Russwin firm gave an order to one of our distributors who deliberately falsified the order and sent it to us.... The upshot of it was that ... we cut off the distributor.... (Emphasis added)
>
> (Yale Dep. Exh. 20, September 1965)

Rhynedance advised Standard Equipment that it could offer to sell the Sargent material to the Russwin dealer "to maintain the masterkey;" otherwise, Sargent would "be on the lookout for this order to stop it internally before we accept it from one of our customers."

(Yale Dep. Exh. 20, September 1965)

2. The Erlanger Hospital incident.

This incident arose from a complaint by Crisman Hardware, a Russwin distributor, that a Sargent dealer had bid upon hardware for the Erlanger Hospital in Chattanooga, Tennessee. Crisman requested McCulloch to get Sargent not to furnish hardware to its distributor.

(Lichtenfels Dep. Exh. 23, March 1961)

Accordingly, McCulloch contacted Sargent. On March 17, 1961, he telegraphed Russwin's southern sales manager that:

> Sargent have advised dealer that they will not accept order for locks less cylinders or for locks to be used if our system stays in....
>
> (Lichtenfels Dep. Exh. 25; Wiley Dep. Exhs. 37 and 38)

In a subsequent intra-company memorandum, McCulloch noted:

> Erlanger Hospital -- Chattanooga, Tenn.
> I talked to Duff [J.B. Duff of Sargent] previously on this and he agreed to stop his acct....
>
> (Lichtenfels Dep. Exh. 27, Apr. 19[illegible])

Nonetheless, McCulloch -- aware that his actions were illegal -- responded guardedly to Crisman in a letter dated March 17, 1961:

> As far as saying anything to Sargent about breaking a master key ... in view of the recent government case against the electrical companies, we are not too happy about discussing things like this with other manufacturers so that no one should get the idea that there is any collusive action between the hardware manufacturers.
>
> (Lichtenfels Dep. Exh. 24)

Crisman subsequently requested Emhart "to see that no other R & E dealer places the order for these cylinders" to extend the masterkey system at Erlanger Hospital. In response, Stu Force, Russwin's Administrative Assistant, assured Crisman that Russwin would enforce its illegal restraints on the sale of contract hardware. Force stated:

> We are being quite careful over this sort of thing, and Mr. John Meagley, our Contract Sales Manager, carefully scrutinizes each order to prevent the sale of masterkeyed cylinders to a builders hardware contract dealer outside the area under consideration, or who has not supplied a part or all of the job earlier. This all ties in with the industry's efforts to promote ethical practices with the trade. (Emphasis added)
>
> (Wiley Dep. Exh. 39, May 1961)

Meagley also responded to Crisman by letter of May 16, 1961, that:

> We will watch all orders here in New Britain carefully to see that these locks or even these cylinders are not placed by some unauthorized dealer.
>
> (Lichtenfels Dep. Exh. 26)

Knowing that Russwin would not sell cylinders to any other dealer, Crisman disciplined the Sargent account by charging "them a price of $7.50 or $8.00 each for the cylinders as Ed McCulloch had suggested."

> (Wiley Dep. Exhs. 36 and 40, March 1961 and May 1961)

This price was more than five times the regular price for cylinders.

3. The Sonar Station incident.

This incident arose from the complaint of a Russwin dealer that a Sargent competitor was bidding on Russwin master-key systems, and had thereby lowered the price structure in Florida.

(Yale Dep. Exh. 22, April 1961)

This complaint was relayed by Russwin's Florida salesman to McCulloch, who responded:

> I have your letter of April 24th regarding the accusations levelled by Taylor & Cotton against Sargent & Company account at Sarasota. This has been taken up with the Vice President of Sargent, and I am sure you will find this type of activity will cease.
>
> However, in taking the matter up with the Vice President of Sargent, he brought out the fact that Taylor & Cotton had done the same thing apparently on a Sonar Station somewhere below Miami to an existing Sargent masterkey. Is this a case of ... "the pot calling the kettle black?" (Emphasis added)

(Lichtenfels Dep. Exh. 28, Apr. 1961)

With respect to McCulloch's inquiry, the salesman explained that the Russwin dealer had not tried to take the job, but submitted an informal quote to the contractor at book price plus 33-1/3% just "to keep his customer happy." Nonetheless the salesman reported that he had "pointed out the dangers of this sort of thing" to the Russwin dealer and "convinced them that their actions look bad even if there was no intent to cause trouble." McCulloch directed this memorandum to Ziegenhein (Emhart) with a reminder:

> Bill - B. Duff [Sargent] called you on this some time back. E.H.M.

(Yale Dep. Exh. 24-A, May 1961)

4. The Rosner Hardware incident.

On February 25, 1964, Earl Materne advised Sam Crissman, Ilco's vice-president, that Rosner Hardware, a newly appointed Corbin account, had caused problems for Abe Deutscher, an Ilco distributor. Materne noted that Deutscher had suggested that George Wheatley, Ilco's contract hardware product manager, should contact Emhart "to get Rosner to stop upsetting the market by quoting bids at book price." Materne seconded the suggestion in his handwriting on the face of the memorandum:

> G.E.W. [George Wheatley] should call Amer Hdwe [Emhart] and tell them that if they allow this situation that Deutscher will fight and we will have to back him. This will drop the price in the N.Y. area and could spread to the rest of the country.

Materne's additional handwritten notations record assurances given Ilco by Emhart that Rosner was not allowed to sell contract hardware items:

> 3/10 -- American Hardware claim not to be selling Rosner-Glucksman contract items and will not do so until they set up with proper personnel.
>
> American Hardware claim not set up as contract account - Claim to be selling at a price and they are working on 5% differential on full case quantity.
>
> (Materne Dep. Exh. 14, Feb. 1964; Materne Tr. 66-67)

5. The LaMoor Field incident.

Yale requested the other defendants to enforce their agreement regarding masterkeys when a dissident stepped out of line. Bill McGreevy, Yale's western regional manager, complained directly to Russwin when the Russwin account in Sacramento bid on a Yale masterkey system. McGreevy reported the incident

to Yale's general sales manager:

> This fellow Don Kerwick respects no ones Master Keys and bid into ours at LaMoor Field which is a L.A. Hdwe. Key [the Yale account]. I called Jack Edwards and told him the facts of life. I also called the R & E [Russwin] man and told him to give that fellow the word. I think they finally bought the locks through L.A. Hdwe.
>
> (Talgo Dep. Exh. 6, undated)

B. Defendants prohibited their dealers from reselling - or bootlegging - contract hardware to eliminate competition on masterkey jobs.

As a means to enforce and police the restrictions against bidding on another defendant's masterkey system, defendants prohibited their dealers from "bootlegging" or reselling contract hardware to dealers of other manufacturers. Because the defendants assigned their dealers to exclusive sales territories and kept them from bidding outside their own territory, the prohibition against bootlegging effectively controlled the bidding upon masterkey systems in each territory. The defendants were well aware that each would block efforts by dealers to "bootleg" hardware.

(Hicks Dep. Exh. 2, January 1962)

In a letter to all Russwin salesmen McCulloch demanded enforcement of the prohibition against bootlegging:

> We not only have the breaking of master key systems by greedy distributors, but we have had some instances of greedy RUSSWIN distributors "bootlegging" contract goods to other than Russwin distributors.
>
> I'm amazed at how a man's greed can warp his judgment....
>
> We do not condone "Bootlegging" and will refuse any order here in New Britain where "bootlegging" is involved....

It's your responsibility to your brother salesmen, as well as your company, not to allow "bootlegging" by any of your accounts.

(O'Neill Dep. Exh. 9, November 1963)

Defendants strictly enforced this policy, as illustrated by the following incidents:

(1) On a project at the University of Nebraska in 1965, Sargent learned from its dealer that Dave Oaks, a Chicago distributor, had bootlegged hardware to a competitor in Omaha, Nebraska, who was able to take "this job at a very low price." Sargent's sales manager, Rhynedance, instructed the key department to stop the order and protect the local distributor. In a memorandum to William Healy, Sargent's Chicago sales manager, Rhynedance stressed "the evils of our distributors pirating materials to our competitors." He asked Healy to have

> a long serious discussion with Dave concerning this practice since we would very seriously consider removing the line from anybody that did this. I think it is obvious that Dave knew what he was doing and simply accepted the order. Please make it very clear to Dave that we look with disfavor on anyone who would do this.
>
> (Rhynedance Dep. Exh. 22-A, August 1965)

Shortly thereafter Healy reported back to Rhynedance:

> I plainly told Dave that we are very disappointed in this activity and that such incidents are grave enough for us to consider the removal of our line from distributors who work in such areas.... Dave stated that he didn't recall my telling him of this matter on 8/22/65 (7/22/65) at which time I informed the Ken Lee people and Dave. I laid it on the line to Dave indicating to him our complete displeasure for us to allow another "mistake" of this nature to occur with his account. I feel certain that we will have no further incidents of this nature with Dave.
>
> (Rhynedance Dep. Exh. 22-B, September 1965)

With respect to this incident Oaks testified:

Q During the period that you were a Sargent contract hardware distributor did Sargent have a policy against bootlegging?

A Yes.

Q Nonetheless did you ever attempt to bootleg?

A Yes.

Q Were you caught?

A Yes.

Q What happened after you were caught?

A Well, Mr. Healy came into my office and reiterated what Sargent's feelings were regarding bootlegging and told me that if this practice continued, I would be subject to termination.

* * *

Q Let me show you what have been previously marked as Rhynedance Exhibits 22-A and 22-B, and ask you to review those documents.

* * *

Q Do these exhibits refer to the bootlegging incident you have just testified about?

A This is the incident.

* * *

Q Did you have such a meeting with Mr. Healy, at which time he said in substance what is set forth in Rhynedance Exhibit 22-B?

A Yes, I did.

Q Did he in fact threaten you with termination if you bootlegged again?

A Yes, he did.

(Oaks Tr. 82-85)

(2) By memorandum to sales manager Geddes Parsons, Corbin's local salesman advised that he had caught a dealer bootlegging Corbin locks for the addition to the Sunnyhill Sanitarium job and told the dealer that Corbin would not fill the order. He instructed Parsons to cancel the order. The order was in fact cancelled.

(Kazmer Dep. Exhs. 10 and 11, August 1961)

(3) By letter of October 7, 1963, McCulloch asked Belknap Hardware (Russwin's dealer in Louisville, Kentucky) not to accept an order for hardware specified for the Texas Christian University. In the alternative, McCulloch suggested that Belknap send the order to him and that he would refuse it with the excuse that "this man is a competitor and is not able to service our hardware properly, he not being a franchised distributor."

(Maher Dep. Exh. 1, October 1963)

Belknap promptly agreed, stating:

> You are familiar with my method of doing business and I just want to assure you that I will not furnish any Yale, Corbin, Sargent, or any other distributor any Russwin hardware.
>
> * * *

> [I]f any Russwin distributor contacts you regarding any master keyed job that we did not establish, that you can safely say that I will not quote on these jobs....
>
> (Maher Dep. Exh. 2, October 1963)

(4) Yale's regional sales manager, Ken Lanyon, advised Yale's Baltimore account, Anderson & Ireland, that Murry Sell of New York could not acquire Yale hardware for use on the University of Maryland Medical Science Library job:

> Murry Sell knows himself that he cannot purchase Yale & Towne contract hardware for any job without first having an o.k. from this office, which he did not get in this instance.
>
> We have contracted various people at White Plains so should he try to secure the hardware through some other Yale distributor we have it well flagged, and it will be turned down in accordance with our usual policy.
>
> (December 9, 1958)

Several weeks later Yale's contract service supervisor advised that an "alert" had been issued that:

> No prices should be given to Murry Sell or any other account ... should Murry Sell try to obtain this hardware by going to an established contract hardware account.
>
> (Letter from Thomas P. Pompa to Anderson & Ireland, December 24, 1958)

(5) When L & R Hardware Co. of Stockton, California, underbid the local Yale account, Roger Graham, on a job at the Willis Jepson School in 1960, regional sales manager Bill McGreevy alerted the home office:

> PUT A FLAG ON THIS ONE AND IT MUST BE PURCHASED THROUGH ROGER.
>
> (Talgo Dep. Exh. 56, September 1960)

McGreevy also sounded the alarm on another job at the Vallejo School District:

> Gordon McCall from Sacramento just underbid Roger on a small $800 order but it will have to be keyed to the existing GMK so flag it also for Roger. These orders could come from anywhere in the country.
>
> (Talgo Dep. Exh. 56, September 1960)

Yale's contract hardware service manager replied:

> Both of these orders have been flagged so that any orders that we get from an outside source will be referred to you for disposition.
>
> (Talgo Dep. Exh. 57, Sep. 1960)

(6) In 1962 when Corbin's New York City account, Heller Company, secured the order for additions to Yale master-key systems at Oyster Bay High School in Long Island and Columbia University, "alert" tickets were placed on Yale's key records for these institutions

> [S]o that in the event Heller attempts to buy the cylinders or locks through some source that we will immediately catch the order before it can be entered.
>
> (Hettling Dep. Exh. 8, May 1962)

The protected distributor, Elmer T. Hebert, received a copy of Young's memorandum.

(7) In 1962 Young ordered his eastern regional manager to prevent bootlegging by McCadden Hardware Company:

> Watch McCadden Hardware very closely and make certain they do not assist any competitive hardware accounts in New York or undermine the sales activity of the Elmer T. Hebert Company....
>
> (Hettling Dep. Exh. 10, June 1962)

(8) Yale terminated persistent bootleggers. Thus, upon complaints from Harry Ambrose, its Vermont distributor, Yale terminated its upstate New York account, Massena Door Closer and Hardware Co. in 1966 for bootlegging Yale hardware to Russwin's Vermont account for jobs at Green Mountain College and the University of Vermont.

> (Quedenfeld Dep. Exhs. 1 and 2, September 1966)

As Lou Quedenfeld, Yale's north-central regional manager at the time, testified:

> Q Isn't it a fact that Eaton decided to terminate Massena because it was reselling hardware to customers that Yale didn't want it to resell to?
>
> A That probably entered into the decision.
>
> (Quedentfeld Dep. Tr. 50)

C. Defendants enforced their restraints by warning to distributors, refusals to deal, requirement that the protected dealer be compensated, and termination.

Defendants closely policed their dealers to prevent violation of their restrictive sales policies. Acting upon reports from dealers and salesmen, defendants secured adherence to the conspiracy by bluntly telling dealers to obey "our sales policy or to get out of business."

(McCulloch Dep. Exh. 45-B, July 1962)

The defendants made certain that dealers realized they were "not ... allowed to bid existing masterkey jobs of someone elses."*/

(McCulloch Dep. Exh. 45-A, June 1962)

The general sales policies of defendants effectively forestalled competition at the dealer level during the conspiratorial period. In specific cases, though defendants asked dealers not to bid on certain jobs and told dealers not to accept certain orders from any other dealer,

(Rhynedance Dep. Exh. 21, November 1965; Lichtenfels Dep. Exh. 39, March 1964; Oaks Dep. Exh. 8, November 1965)

defendants frequently forced (or "pursuaded") dealers to withdraw unauthorized bids.

(McCulloch Dep. Exh. 46, May 1962)

For instance, Lichtenfels advised William Maher, Russwin's Chicago sales manager, that Edward Hines Lumber Co. had bid on an "existing Corbin key system." Lichtenfels asked:

> Would you please be kind enough to give us the necessary information as to why Edward Hines Lbr.

---

*/ The defendants' internal memoranda reveal their arrogant attitude toward their dealers. As Russwin's southern sales manager, Glenn Wiley, wrote to O'Neill: "If our position and policies are such, that we must let a small town Jew boy dictate as to how we shall operate our business ... then we sure have got ourselves 'between a hard place and a rock'."

(O'Neill Dep. Exh. 2, July 1967)

Co. would break into a Corbin system and if they have violated our normal attitude, that they be instructed to gracefully withdraw, if possible?

(Maher Dep. Exh. 11, October 1965)

In another case, Rhynedance assured a complaining Sargent dealer that another dealer had admitted his "mistake" in bidding on an existing masterkey system. He stressed: "It is our vowed intention to maintain the sanctity of our masterkeys in all territories. I am sure that the job in this case will be worked out to your satisfaction."

(Rhynedance Dep. Exh. 17-A, June 1965)

If a dealer actually competed on masterkey jobs, defendants enforced adherence to their sales policies by several means:

(i) Termination of maverick dealer.

(ii) Refusal to fill orders from the maverick dealer or anyone else who might bootleg the hardware to him.

(iii) Requirement that maverick dealer purchase the hardware from the protected dealer, share the profit, or otherwise compensate the protected dealer.

(iv) Disciplinary proceedings in the ASAHC.

The contract hardware dealers, of course, helped police the restraints upon competition by complaints when another dealer bid or offered to sell hardware for a "protected" masterkey project. By such complaints, these dealers reaffirmed their adherence to the conspiracy. The defendants, in turn, reassured these dealers that the maverick had warned or disciplined to stop any further competition, and sometimes compensated the offended dealer to keep him committed to the conspiracy.

This section discusses some of the enforcement incidents revealed in the documents. As additional evidence is assembled, plaintiffs intend to supplement these examples.

1. Termination of dealers for competing on masterkey systems.

(a) Emhart's termination of Witt Hardware Company of Davenport, Iowa.

(Lichtenfels Dep. Exhs. 3-9, February-August, 1964)

On February 6, 1964, McCulloch telegraphed Witt: "For Sake of Family Peace -- Don't Break System."

(Lichtentfels Dep. Exh. 3)

Witt refused to cooperate with his Corbin competitor. As a result, Emhart terminated Witt, despite the fact that Witt's purchases from Russwin in 1963 "were the largest ever."

(Lichtenfels Dep. Exh. 6, March 1964)

McCulloch cautioned:

> No one should have any discussion with Mr. Witt as to why we are severing relations except that it is a decision of management.
>
> (Lichtenfels Dep. Exh. 7, July 1964)

(b) Yale's termination of dealers for bidding on masterkey systems.

In 1966, Yale terminated F. G. Norman & Sons, its contract account in San Francisco for "bidding into Yale's masterkey system."

(Hettling Dep. Exh. 2, June 1966)

The same year, Yale terminated Dalliare Builders Hardware Corp., its Manchester, New Hampshire contract account, for taking "pot shots at existing master keys."

(Hettling Dep. Exh. 4, Sep. 1966)

Pascock Lock Supply Co. of New Jersey lost its contract account status in 1963 "to avoid confliction with ... New Jersey Hardware Company ... particularly [on] masterkey systems."

(Hettling Dep. Exh. 12, July 1963)

In 1961, Yale terminated Anderson and Ireland, their Baltimore, Maryland contract hardware account, for bidding on existing masterkey systems. (This is also discussed in connection with the expulsion of Carr from the ASAHC).

(c) Hobbs Supply Co. of Eau Claire, Wisconsin (1961).

Upon complaint from Corbin's Minnesota dealer, Warner Hardware, that Hobbs had submitted a bid of $7,700 on a Corbin masterkey, compared to the protected dealer's "low" bid of $10,700,

(Parsons Dep. Exh. 13, June 1961)

Emhart sales officials noted "that Hobbs should lose the Russwin line if they attempt to go ahead with furnishing this job."

(Parsons Dep. Exh. 15, July 1961)

Corbin then informed Warner that it would not accept an order for this job from any other dealer.

(Parsons Dep. Exh. 16, July 1961)

A stop was in fact put on the order and Hobbs was terminated.

(Parsons Dep. Exhs. 17 and 19, August 1961)

Hobbs was later terminated as a Sargent dealer following an attempt by Hobbs to order hardware for a job in another dealer's territory.

(Yale Dep. Exh. 34, August 1965; Rhynedance Dep. Exhs. 3-A to 3-C August 1965)

2. Refusal to Fill Orders.

Defendants "protected" masterkey jobs and their assigned dealers by refusing to accept orders from any other source. These orders were "stopped" and returned to maverick dealers by defendants, with the warning not to violate sales policy. As McCulloch advised Tri-State Builders Hardware:

> Certainly you, I am sure, don't want to ... raise chaos among the Russwin distributors in Ohio which have functioned very well for the past several years. In fact, to be blunt, Russwin cannot permit this.
>
> Trusting you will agree that we are right in this matter and that you will cooperate with our established policy in the future. If you feel you cannot agree to this course, then we would have to withdraw our line from your Columbus operation....
>
> (O'Neill Dep. Exh. 19, November 1965)

At the same time defendants assured protected dealers who complained about competition that defendants would not sell hardware to anyone else, and thus reaffirmed the conspiracy. For instance, F. Meyer & Bro. complained to McCulloch:

> As the exclusive Russwin dealer in this territory ... we have kept our agreement with Russell and Erwin inviolate, but find for the second time within a relatively few months that Mr. George Schneider has underbid us on several jobs wherein Russwin masterkeying was involved - one being the St. Thomas Catholic Church, and the other an addition to the East Peoria High School.
>
> I feel we are entitled to some retribution as well as assurance of no further similar situations.
>
> (Maher Dep. Exh. 3, March 1961)

In response to the foregoing complaint, McCulloch wrote:

> I am in full accord with you that Mr. Schneider not be allowed to quote on RUSSWIN jobs in your area or against existing masterkeys that you may have established in your area. I am sure that Bill Maher, our salesman, is in full accord with our thinking as this type of policy <u>is our general policy throughout the country</u>....
>
> * * *

I am asking Bill Maher in the copy of this letter to bring these complaints to Mr. Schneider's attention and if Mr. Schneider says he is not going to abide by our policy, then at the time he is notified, he will automatically lose the RUSSWIN line. (Emphasis added)

(Maher Dep. Exh. 4, April 1961)

Maher advised McCulloch that he stopped orders from Schneider and would review all future orders.

(Maher Dep. Exh. 5, April 1961)

In another incident, a Sargent dealer, Fred Schilling & Son, complained about competition on the Suffolk County Community College, stressing that Eli Yale had previously assured "that Sargent and Company has the right to refuse sale of material to another Distributor in order to protect another Distributor (in this case Fred Schilling & Son, Inc.) who holds the original masterkey system." Schilling demanded a percentage of the profit if Sargent allowed it to lose the job. Eli Yale responded that "it has been made plain to Goldman [the maverick dealer] that we can and will protect masterkey conditions."

(Gray Dep. Exhs. 28 and 29, April 1964)

The keying records that defendants maintained at their factories enabled them to "stop" or "flag" orders for contract hardware to be used on masterkey jobs. Defendants, in concert with their dealers, were vigilant to prevent any sales of contract hardware that were not in accordance with the restrictive sales policies. Numerous examples of such incidents are listed at the end of this section.

The restraints upon competition for masterkey extensions had the obvious purpose and effect of keeping prices high, as may be seen from the following Sargent incident:

Upon complaint from Ken Lee Hardware Company in Chicago, Sargent refused to sell locksets and cylinders to any other dealer for a masterkey system extension in East Dubuque, Illinois (175 miles from Chicago).

(Rhynedance Dep. Exhs. 14-A and 14-B, May 1965)

The intra-corporate memoranda leave no doubt of Sargent's intent: "[A] competitor has broken the specification on the key system. We would like to stop them from pirating locksets from another account."

(Rhynedance Dep. Exh. 14-D, May 1965)

The Sargent sales representative (W.J. Healy) reported that the hardware contract had been awarded to other dealers because "Ken Lee's price was high."

(Rhynedance Dep. Exh. 14-B, May 1965)

The defendants enforced their restrictions on the sales of masterkey systems by providing in their price books that masterkey prices would be available only "on application."

(Talgo Dep. Exhs. 1 and 2, August 1965 (Yale 1965 price lists); Materne Dep. Exhs. 18-A and 18-B, May and June 1963; Wright Dep. Exhs. 20 to 26, Ilco's Architectural Hardware Price Lists, 1954-1970)

This term was understood in the industry to permit the defendants to refuse to fill orders for extensions by dealers who had not originated or been assigned the masterkey system in question. Thus, to protect its existing masterkeys from a newly appointed account, Yale's Dallas dealer suggested that general sales manager Young:

> [A]pply the policy of the corporation and that is "price on application for masterkey extensions."

(Talgo Dep. Exh. 11, September 1962)

Defendants continued to refuse orders during the conspiratorial period despite their knowledge that it was illegal. In a 1961 letter to all salesmen, McCulloch reported the following discussion at a meeting among Russwin dealers:

> We discussed the legality of refusing to sell a Russwin dealer a masterkeyed job when he quoted on a system other than one he started and where the key system actually belongs to another Russwin distributor. We had Mr. T. M. Ford, our Legal Counsel, advise the group that legally we could not refuse to sell this distributor that quoted on the key system even though it wasn't his own if we hadn't advised him prior to bid time that he should not quote on it. We pointed out that this matter of protection was more of a gentlemen's agreement, and a moral agreement, and had been conducted that way for many years and that we hoped it could continue. However, I think this clarified the point of us refusing to supply an order to a Russwin dealer who quotes on a key system other than his own. We can't take the line away from him or refuse to quote him on this one job alone, but what we do after this job is finished, would be something else.
>
> (Deady Dep. Exh. 23, November 1961)

Two years later, Russwin's manager of contract sales, John Meagley, returned a dealer's order for hardware keyed to an existing masterkey system, explaining:

> Our General Sales Manager [McCulloch] has written a letter to our RUSSWIN representative pertaining to the policy that we should attempt to protect our distributors in maintaining a master key system which they established. Since our Augusta, Ga. distributor established a master key for this school district, we are unable to enter an order for the cylinders listed in this schedule, and the schedule is being returned to you with this letter.
>
> (Wiley Dep. Exh. 45, December 1963)

In those instances that defendants received complaints too late to stop an order from a maverick dealer, the offended dealer was told that steps would be taken to prevent any recurrence of competition. This discipline included termination.

(Yale Dep. Exh. 20, September 1965)

As Russwin's general sales manager, Tom O'Neill wrote to a local salesman:

> [I]f we had received a complaint from him on this job, prior to receipt of the order from Las Vegas, we could have refused the order at that time. But once it was acknowledged and entered for manufacture, and due to the action of the hardware man, in Las Vegas, we were pretty well put in a corner - and of course, you can pretty well read between the lines as to what my attitude and RUSSWIN'S in general is towards this particular individual from here on in.
>
> (O'Neill Dep. Exh. 22, June 1966)

In another case, McCulloch assured a complaining dealer that competition had resulted from a new dealer "not being fully familiar with how we operate on existing RUSSWIN masterkey state work" and that "Tom O'Neill has straightened everybody out on this score and you won't find any further cause for trouble." McCulloch reminded him that the conspiracy had worked effectively: "The last time we had a similar situation was about two or three years ago when Al Tawill first started buying."

(O'Neill Dep. Exh. 23, Jan. 1961)

Despite the investigation and complaints by the federal government, the conspiracy continued to operate; contract hardware dealers still adhered to the restraints on competition, and expected protection from defendants. In February 1969, the Yale dealer in Boston, Dave Eskin, advised A. E. Gray (then working for Yale) that it had lost a job on which it had written the specifications.

(Gray Dep. Exh. 42, February 1969)

Gray then wrote his superior William Hettling:

> I assume from Dave's attached letter that he wants us to turn down any order received from either a Challanger (sic) or Yale account for locks and/or cylinders factory ordered to the

Yale system Eskin originally established for the Pingree School, South Hamilton, Mass.

Can I write Dave that Key Record will be on the lookout for such an order, if it hasn't already gone through?

(Gray Dep. Exh. 41, March 1969)

3. Requirement that maverick compensate protected dealer for lost business.

Defendants required maverick dealers who obtained unauthorized jobs to buy the necessary locks and cylinders for the masterkey system from the protected dealer,

(Pantas Dep. Exh. 12, May 1963)

often at exorbitant prices;

(Wiley Dep. Exh. 40, May 1961)

to share their profit with the protected dealer, or otherwise to compensate the protected dealer.

(Bauman Dep. Exh. 27, July 1964)

This effectively prevented violations of sales policy. Defendants monitored these arrangements by refusing to fill orders from anyone other than their protected dealers. For example:

(1) Deady, midwest sales manager for Russwin, reported to McCulloch:

> Ceco [an O.E.M. customer] have been excellent on protecting Hines [Russwin dealer] on masterkey work, after paying $12.50 per cyl. over two years ago.... We have a very definite understanding with Ceco. They will not bid master key work and if Hines should ever write a hardware specification that will be bid competitively Ceco would be willing to cooperate.
>
> (Deady Dep. Exh. 6, December 1963)

(2) When W. L. Reid successfully bid upon the masterkey system established by A. Laserowitz & Son at the Offutt Air Force Base in Omaha, Nebraska, Wheatley, Ilco's contract hardware product manager, refused to sell the hardware to Reid, forcing him to purchase from Laserowitz.

(Wheatley Dep. Exh. 10, June 1965; Wheatley Dep. Exhs. 7-9, February, May and June 1965)

(3) Architectural Specialties, a Seattle dealer for Russwin, secured an order from a Seattle architect for hardware to extend the masterkey system at a high school in Great Falls, Montana. In order "to maintain our attitude and support to our distributors on our masterkey systems, as I am sure he would expect us to do if the shoe were on the other foot," W. C. Lichtenfels required Architectural Specialties to give 50% of the profit to the local dealer, Montana Steel and Supply Co.

(Lichtenfels Dep. Exhs. 17-21, October 1964)

(4) When Tri-State Hardware of Philadelphia, which had established Campbell Soup's masterkey system, was an unsuccessful bidder on a Paris, Texas building, it demanded that Harry Talgo, Yale's assistant general sales manager, make certain the job was purchased through Tri-State as promised:

> As you can see from telephone message and your letter, all Yale goods on this particular job were to be purchased through this office.... We are not requesting anything that was not originally promised to us.

(Talgo Dep. Exh. 17, February 1963; Talgo Tr. 196)

Accordingly, the low bidder, Webb Builders of Dallas, Texas, was forced to buy the locks through Tri-State. Yale's general sales manager later conceded to Webb that "Mr. Talgo [had] been trying to protect Mr. Tarantola" of Tri-State on the Paris job.

(Pantas Dep. Exh. 13, May 1963)

(5) J. E. McGee, Yale's supervisor of contract orders, wrote to Yale salesman Bill Wolfe in 1965:

> We have a letter from Mr. Jack Maupin in regard to the Texarkana College in Texarkana, Texas. The GMK System for this College was established by Pierce, Inc., Dallas, Texas, and now a recent addition, Building Service Company, Shreveport, La., was the low bidder.

> You are requested to advise Building Service Company that this is a Pierce, Inc. GMK System, and therefore if they are to purchase the locks and supply the locks for this job, they are to buy them through Pierce, Inc , in Dallas, Texas.
>
> (Talgo Dep. Exh. 16, Nov. 1965)

The manager of Yale's order department instructed the supervisor of key records regarding an addition to the Texarkana Housing Authority master key:

> There is a bid coming out for an addition on the subject job and this original Master Key was started by Pierce, Inc. Please refer to me any orders received on this job which are not originated by Pierce, Inc.
>
> (Talgo Dep. Exh. 15, May 1965)

Defendants themselves compensated protected dealers for "lost" jobs in order to keep them committed to the conspiracy. In one such incident, Henges Company complained to Carl Bauman, general sales manager of Corbin, about losing a job to another dealer who had invaded the territory assigned to Henges.

(Kazmer Dep. Exhs. 17 and 18, May 1963)

Bauman responded by warning of "F.T.C. rulings and investigations in recent months," assured Henges that Corbin would try to protect Henges, and gave Henges a $4,000 credit (by a special 10% discount on goods purchased) to make up for lost profit on the job. This satisfied Henges.

(Kazmer Dep. Exhs. 19-21, May-July 1963)

In a similar case, Sargent agreed to give Merner Hardware a 5% "commission" on a "job that Transwestern Supply took away from Merner after they had agreed to give a complimentary bid."

(Salaman Dep. Exhs. 14 and 15, May 1964)

D. Refusals of defendants to sell contract hardware to their dealers to enforce the restraints against competing on masterkey work.

1. January 1968: Gray, Sargent's eastern sales manager, advised Architects Hardware and Specialty Co. that "Sargent and Company will not sell Henry Meurs & Sons under any circumstances" for an addition to the Samaritan Hospital in the territory assigned to Architects Hardware:

> Please note that I am sending a copy of this letter to Bert Schmidt to alert his other area distributors in the event they are asked to quote.

(Yale Dep. Exh. 33)

2. March 1967: Wheatley assured the local Pennsylvania dealer that Ilco has taken "the necessary steps" to prevent competition from New York dealers on the Coatesville Veterans Hospital.

(Wheatley Dep. Exhs. 14 and 15)

3. November 1966: Wheatley stopped orders to protect Craftsmen, Ilco's New Hampshire dealer, on an addition to an elementary school in Bedford, New Hampshire.

(Wheatley Dep. Exhs. 11 and 11-A)

4. February 1964: Ilco refused to sell hardware to Craftsmen for jobs outside his assigned territory, even though no other Ilco dealer had bid on the jobs.

(Materne Dep. Exh. 12)

5. January 1966: Wheatley put a stop on orders for Alfred E. Smith State Office Building received from any Ilco dealer besides Semel Goldman Co.

(Wheatley Dep. Exh. 13)

6. December 1965: Upon complaint from Morley Brothers, a Sargent dealer in Saginaw, Michigan, that it had lost a masterkey job to a Yale dealer, Rhynedance, Sargent's midwestern sales manager, wrote:

> I cannot answer your question as to how a Yale distributor could get masterkey locks keyed to an existing Sargent masterkey system. In the past we have stopped this kind of thing and we will make every effort to stop it this time.

(Rhynedance Dep. Exh. 19)

7. July 1964: Morley Brothers secured an order for a public housing project in the City of Detroit. The local Sargent salesman, R. W. Thompson, noted that "this should have been a Freeman existing key order."

(Thompson Dep. Exh. 19)

Thereupon, Sargent stopped the order from Morley and returned it to Thompson.

(Thompson Dep. Exh. 20 and 21)

8. November 1965: Healy, Sargent's midwest sales representative, told Dave Oaks, a local Chicago dealer, not to accept orders for hardware from Nicholson Hardware of Rockford, Illinois, who had bid on an existing masterkey system at the Wilson Junior High School.

(Oaks Dep. Exh. 8)

9. October 1965: An internal Yale memorandum stated:

> We have received an order dated October 4th from Hellring Brothers Inc. ... calling for 12 sets of LF5307 locksets, GMKeyed to the existing GMKey system for American Cyanamid Company in Princeton, New Jersey.
>
> We have a flag in the key record folder indicating that no orders are to be added to this system except through the New Jersey Hardware Company. (Emphasis added)

(Talgo Dep. Exh. 58)

10. July 1965: The manager of Yale's order department responded to a letter from BDR Engineering Corp., Yale's Kansas City contract account:

> Bill Snyder [a Yale employee] has sent us your letter of June 25 concerning the High School at LaMonte, Missouri. In checking our records, we find no master key system listed under the name as given in your letter but we do find a master key system listed as Re-organized School District, LaMonte, Missouri, master key No. N261454G.
>
> Please advise us if this is the master key system you are referring to and we will then put a stop order in the folder to prevent the furnishing of cylinders to this system.

(Talgo Dep. Exh. 14)

11. June 1965: Eli Yale informed the Sargent order department that the George Worthington Co. of Lansing, Michigan, had shipped contract hardware to its residential account in Cleveland and used the hardware to bid on additions to existing Sargent masterkey systems. Yale asked:

> Will you please take whatever steps necessary to prevent any further sale of contract material to this account.

(Yale Dep. Exh. 35)

A subsequent memorandum shows that Sargent stopped the further sale of contract items to the George Worthington Company.

(Yale Dep. Exh. 36)

12. October 1964: Dumas Hardware Company, Sargent's account in San Antonio, Texas, complained to Eli Yale that:

> One of our competitors recently bid and was low on a [masterkey] job involving two elementary schools for the Harlandale Independent School District.

Dumas asked Sargent to prevent the bootlegging of the necessary locks and cylinders.

(Yale Dep. Exh. 12)

Eli Yale immediately advised Sid McMaster, head of the keying department:

> Please put a stop on any order for an addition to the above school district Grandmaster key LM31836 if ordered through other than Dumas Hardware Company.

(Yale Dep. Exh. 13)

Eli Yale then advised Dumas that he had:

> Put a stop on any additions to the Harlandale Independent School District with our Keying Department.

(Yale Dep. Exh. 14)

13. October 1964: A Sargent salesman complained to Eli Yale that a Fenestra account in Atlanta, Georgia, had secured the order for an addition to a masterkey system at the Telfair County High School, originally installed by the Neal-Blun Company in Savannah, Georgia. The salesman wrote:

> It would seem that this firm has no intention of cooperating with the established Sargent accounts in this area and should be cut off or at least prohibited from buying master keyed locks.

(Yale Dep. Exh. 15)

Eli Yale immediately advised Mr. McMaster of the keying department to stop any order for the masterkey system at Telfair County High School unless it came through the Neal-Blun Company.

(Yale Dep. Exh. 16)

14. August 1964: Eli Yale put a stop on any order for an addition to a masterkey system in Cedar Rapids, Iowa "other than through Ken-Lee Hardware Company," which was located in Chicago.

(Yale Dep. Exh. 37)

Thereafter, Yale advised Healy, Sargent's midwest sales representative that:

> [A] stop has been put with the Keying Dept. for any orders for the [Cedar Rapids job] entered through other than Ken-Lee Hardware Company.

(Yale Dep. Exh. 38)

15. March 1964: Wheatley put a stop on all orders for Butts Army Air Field in Colorado to prevent any Ilco dealer from bootlegging the hardware.

(Wheatley Dep. Exh. 12)

16. March 1964: Upon a complaint from Broadway Supply Co. that another dealer had "pirated" a job, Wheatley assured the complainant that Ilco would not fill any order "received from those people or from some other distributor for this job."

(Wheatley Dep. Exhs. 26 and 27)

17. December 1963: By memorandum to Gene Deady, midwestern sales manager, McCulloch relayed a complaint from a local Russwin dealer that a Ceco dealer, Twin-City Glass Company of Monroe, Louisiana, had bid on an existing Russwin masterkey. McCulloch asked:

> Will you please take this up with the powers that be at Ceco and see if they can get Twin City to withdraw their bids. We've had trouble in the past, in one or two instances with this Ceco account in Monroe, I thought we had the ghost of Ceco bidding on existing Russwin master keys pretty well laid to rest.
>
> (Deady Dep. Exh. 7)

Thereafter McCulloch advised Glenn Wiley, Russwin's southern sales manager, as follows:

> Ceco has advised Twin City Glass that they will not furnish RUSSWIN masterkeyed locks for this job, and has instructed Twin City Glass to contact our distributor for a quote on the hardware needed.
>
> (Deady Dep. Exh. 8)

18. September 1963: In response to a complaint from O'Malley Builders Hardware about the Municipal Baseball Stadium, Eli Yale advised by letter:

> ... I have had a stop put on any orders being entered keyed to the City of Phoenix masterkey unless through O'Malley Builders Hardware. We certainly will do everything possible to protect your masterkey and will refuse to sell cylinders to anyone except O'Malley.
>
> (Salaman Dep. Exh. 18)

Copies of the letter were sent to the local Sargent sales personnel and the keying department. Shortly thereafter, a dealer in Kansas City, Missouri, placed an order for the hardware to be used on the Baseball Stadium in Phoenix, Arizona. Eli Yale returned the order and informed the Kansas City dealer to place the order with O'Malley Builders Hardware in Phoenix.

(Salaman Dep. Exh. 19, October 1963)

19. November 1962: Eli Yale, general sales manager, directed Sargent sales personnel to stop an order for the Hopewell School District in Pittsburgh, Pennsylvania, to protect A. G. Mauro Company who initiated the masterkey system. The local sales man had reported that the dealer who submitted the low bid would try to purchase the "locks outside of the Pittsburgh area."

(Yale Dep. Exhs. 6 and 7)

20. July 1962: Carl Bauman, general sales manager, advised Corbin sales personnel that Booher:

> ... the Lockwood account in Wichita, Kansas, has bid into a CORBIN master and grand master key at the University of Kansas Medical Center.
>
> (Bauman Dep. Exh. 90)

Bauman instructed them to

> be on the lookout for any order approximating this quantity in this keyway, so that we may put a "stopper" on this job.
>
> (Bauman Dep. Exh. 90)

21. August 1961: Dave Oaks, Russwin sales manager, instructed T. P. Meagley, manager of contract sales, to cancel an order from Witt Hardware to prevent "breaking a master key established by Hardware Distributors."

(Oaks Dep. Exhs. 1 and 2)

22. August 1961: Maher, then a Russwin salesman, instructed Meagley to "put a hold" on any orders for the Robein School addition "as this would be a violation of a master key held by F. Meyer."

(Maher Dep. Exh. 10)

23. June 1961: Gene Deady, a Russwin salesman reported to the factory that:

> It seems that our dealer has an order to furnish some locks masterkeyed to Ceco's existing system.
>
> Ceco advised our dealer to purchase the locks from them just as Ceco has to do when they are up against the dealers MK....
>
> Please watch for an order from our St. Louis dealer for the above captioned job -- don't let it get through.
>
> (Deady Dep. Exh. 4)

E. Defendants enforced the industry-wide agreement against competing on masterkey jobs through the American Society of Architectural Hardware Consultants.

The architectural hardware industry's trade associations were used by defendants and their dealers as an effective means to promulgate and enforce their restrictions on the sale of contract hardware.

From its inception the American Society of Architectural Hardware Consultants ("ASAHC") prohibited breaking competitors' masterkey systems: As former ASAHC President, Dan Hay, put it to the 600 delegates at the 1957 hardware convention:

> [B]ack in 1941, maybe just a little later when we got our feet on the ground, one of the very first things that was brought up and agreed to, was that we would respect masterkeys.
>
> (N-1502-1503, September 1957; AS-811, October 1958)

In the late 1950's, when some dealers began "disregarding" this agreement, defendants sought to have the National Builders Hardware Association ("NBHA") adopt a "code of ethics" that manufacturers would not "intrude upon other members' masterkey systems."*/ The NBHA's general counsel advised defendants, however, that such agreement among manufacturers would be illegal.

(Booth Dep. Exh. 10, November 1956

Thereupon, defendants sought to "circumvent" this legal obstacle "by placing the matter of masterkeying ethics in the lap of the [American] Society [of Architectural Hardware Consultants]. Then

---

*/ L. Curtis Booth, Corbin's vice-president, reported that "all of the manufacturers are honestly attempting to bring moral persuasion on their dealers to give up this practice."

(Booth Dep. Exh. 6, April 1958)

it would become a part of ethics among individual Society members."

(Booth Dep. Exh. 9, April 1958)

Shortly thereafter, in 1958, the ASAHC adopted a so-called "Code of Ethics" against "Breaking a Masterkeying System,"

(Bauman Dep. Exhs. 70-D and 70-E, May 1958)

which set forth the existing "ethical" agreements in a "forthright and forceful manner."

(Bauman Dep. Exhs. 41-A and 41-B, December 1958)

The ASAHC defined breaking a masterkey system as:

> [T]he act of specifying or furnishing a lock system other than that in existence, when the owner and architect desire to continue the existing system, or the furnishing of locks and cylinders keyed by other than the original manufacturer at his plant, where permanent keying records are maintained for the owner's protection.
>
> (Booth Dep. Exh. 5, December 1962)

Provisions of the masterkey code of ethics repeatedly were published in the trade association journal that was distributed to all members.

(E-6701, May 1958;
Bauman Dep. Exh. 43-B, July 1962;
AS-131-132, 813, 816-817, 856)

By speeches at trade association conventions and articles in trade journals defendants reiterated the need for industry-wide adherence to ASAHC's prohibition against breaking masterkey systems.

In 1964, defendants reiterated their commitment to the restriction against breaking masterkey systems through the ASAHC's Manual of Standardization for Terms and Nomenclature of Masterkeying, which was prepared by top sales executives from each of the defendants:

> Any extensions or additions to the [masterkey] system should be supplied by the lock manufacturer originating the system.
>
> (Quedenfeld Dep. Exh. 33, undated;
> Lichtenfels Tr. 15-16;
> Wheatley Tr. 28-29)

The measures that defendants took to enforce these "ethical" restrictions leaves no doubt this language was meant and applied to prevent any distributor from bidding upon an existing masterkey system -- the purpose being to eliminate price competition. In this regard, McCulloch stated to a joint meeting of the ASAHC and Builders Hardware Manufacturers Association ("BHMA") on April 30, 1965:

> The system is "broken" when a low bid from a competitor forces the owner through economic pressure to establish a new system.
>
> (AS-1189, April 1965)

1. Defendants required their dealers to adhere to the ASAHC's proscription against breaking masterkey systems.

Defendants implemented their conspiracy by enforcing the ASAHC's "code of ethics" which forbade competing on existing masterkey systems. In this connection, McCulloch wrote to a Russwin dealer on March 21, 1963:

> I know Ben, that you subscribed faithfully to the maintaining of a legitimate master key system. This not only makes good business sense, but it is one of the main points of ethics of our industry and the A.S.A.H.C. For if the continuation of master key systems isn't respected by all, this would break down the economics and frankly, the making of reasonable profits for our industry. I'm sure you will agree.
>
> I hope that you won't be tempted no matter how much your competitor gores you into doing anything to upset the principle and the establishment of continuing existing master key systems for this can be a two edged sword. I'm sure you will agree. I would suggest because this matter seems to be uppermost in your minds and apparently in your competitors, that you bite your tongue (if I may use such a phrase) if contractors or owners approach you on your feelings in this matter. (Emphasis added)
>
> (E-8515, March 1963)

The record contains numerous other incidents where defendants invoked the "code of ethics" to prevent competition by dealers.

(1) By letter of February 12, 1962, McCulloch told a salesman to investigate a report that a Russwin dealer had tried to break a masterkey system, stressing:

> This is simply ethics, and I'd feel the same whether this was a Sargent or Lockwood dealer if we did this deliberately on an existing key system.
>
> (E-8600)

(2) Sargent sales manager Eli Yale advised Thompson, southern sales manager, that:

> The above order has been put through at regular prices including the charge for the replacement cylinders. It is completely against our policy to break competitive master keys by replacing cylinders on a no-charge basis. If the distributor does this it is one thing, but it is completely unethical for Sargent & Company to be a party to this. It is also against the ethics of the Society to do this. Will you please explain this to the customer.
>
> (Thompson Dep. Exh. 23, June 1966)

(3) In a sales bulletin of June 17, 1963, McCulloch chastised his salesmen for not keeping dealers from breaking masterkey systems:

> However, I feel that the illegitimate and willful "breaking" of any manufacturer's established master key system is not right, ethically, morally and is just poor business thinking, for remember the same sword can be turned on the originator of such a practice some day.
>
> * * *
>
> I feel very strongly regarding this matter, both as head of our division's sales and an officer of the A.S.A.H.C. I don't intend to compromise my position with our company or industry.
>
> (Lichtenfels Dep. Exh. 35-B, June 1963)

A copy of the foregoing sales note was sent to the ASAHC.

(Lichtenfels Dep. Exh. 35-A, undated)

These enforcement efforts were effective because ASAHC membership included personnel of both manufacturers and dealers. As a matter of policy, defendants urged, and even pressured,

their sales personnel and distributors to join the

(Booth Dep. Exh. 1, J
Parsons Dep. Exhs. 1
April and December 1
Reilly Tr. 25;
Quedenfeld Tr. 35-36
S-1291)

Dealers understood these restrictions and

in their enforcement. As Gray reported to Eli Yale

the Cleveland market:

> A vigorous campaign on the part of our ac
> to perpetuate Sargent & Company masterkey
> of which have been broken by our former a
> and some of which have been continued by
> the cylinders taken out of the hardware c
> and purchased by the owners through devic
> Our account plans to initiate such action
> necessary through the Society of the Amer
> ware Consultants and bring individual cha
> against that individual of the Society wh
> sponsible for what is considered to be a
> violation of the Society's Code of Ethics
> charges it is hoped will eliminate the p
> of breaking our masterkeys....
>
> (Gray Dep. Exh. 27,

Another dealer complained to McCulloch about insta

fair" competition and bootlegging by dealers of ot

turers, and stated:

> Today, we want to go on record with you,
> as a representative of Russell & Erwin D
> and as an officer of the ASAHC, that we
> not competitively quote on other than Ru
> master key additions until such a time t
> of our competitors quotes a continuation
> existing bona-fide Russwin master keyed
> is within our territory and which shou'd
> fully be furnished by us as a legitimate
> Distributor. At such a time that this u
> practice takes place, it shall be "Katie
> door" as far as we are concerned with ex
> master keyed jobs of either Schlage or S
> or anyone of the others if they are the
> violates the standard practice of the in
> with respect to master keyed additions.
>
> We fully realize that Schlage has no pr
> policy toward their distributors or dea
> certainly Sargent does. To date, we ha
> trouble in this matter with Corbin, Yal
> wood (except for Brownell on State and
> jobs), which, in a way, is understandab
>
> (Wiley Dep. Exh. 42

McCulloch assured Taylor & Cotton that the breaking of master-key systems by the Sargent "competitor ... was taken up with certain parties and I am sure you will find the situation is now straightened out."

(Wiley Dep. Exh. 41, August 1961)

The dealers frequently complained themselves to the ASAHC about competition from other dealers on masterkey jobs. One such incident is recorded in the files of the George Worthington Company, Cleveland, Ohio. By letters directly to Worthington and the ASAHC, Cleveland Vicon Company, a competing dealer, demanded that Worthington stop offering to sell Russwin hardware for additions to existing Sargent masterkey systems. On behalf of the ASAHC, McCulloch warned Worthington that it was a "violation" of the trade association's by-laws to supply "Master Keyed locks to existing Master Key Systems that are under a Master Key other than that of the manufacturer your firm represents."

(Documents coded GW60, 54, 61, 64-67, February 1965 through October 1967)

2. Prosecutions for violations of the "Code of Ethics."

The "Code of Ethics" was vigorously enforced. The ASAHC's by-laws required all members to adhere to the "Code of Ethics"

(Bauman Dep. Exh. 36-B, 1951)

and established a procedure for prosecution of complaints that a distributor had tried to break a masterkey system or offered to sell contract hardware of a manufacturer other than his own. An ethical practices committee, comprised of representatives from different companies, would conduct an investigation. If found guilty, distributors were suspended or expelled from the ASAHC.

(a) The expulsion of W.L. Reid for attempting to "break" a masterkey system.

W. L. Reid was expelled in 1960 for offering to supply Yale locks on Oregon State College Dormitory which was specified as a continuation of a Schlage masterkey system. When Reid began legal action to obtain an opportunity to compete on the dormitory, Corbin's Oregon dealer, Bill Schmiedling, wrote:

> Mr. Reid is certainly breaking all the ethics of both the Association and the Society when he resorts to such methods to try to break existing masterkeys.
>
> (N-373-3/4, June 1959)

Consequently, the following defendants voted unanimously to expel Reid at the ASAHC's Board of Directors meeting in September, 1960: Edward H. McCulloch and Thomas B. O'Neill (Russwin); L. Curtis Booth (Corbin); J. C. Elmblad (Sargent); and Les G. Groves (Yale).

(Bauman Dep. Exhs. 45-A, B, C and D, September 1960)

(b) Ken Booher was expelled for bidding on another manufacturer's masterkey system.

Since masterkey ethics prohibited dealers from bidding another manufacturer's product, Ken Booher, a Lockwood dealer in Wichita, Kansas, was expelled in 1961 for offering to supply Sargent products as specified on the Student Housing Building at the University of Denver, a Sargent masterkey addition.*/

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*/ Only a dealer with "normal access to Sargent goods" -- i.e., a franchised Sargent dealer -- could "ethically" bid on a job calling for Sargent hardware.

Denouncing Booher's bid as an "infraction of the code of ethics" and a "willful breaking of a competitor's masterkey system,"

(Bauman Dep. Exhs. 61-A and B, May 1961)

Roy G. Salaman, Sargent's western sales manager, spearheaded the expulsion demand.

(Salaman Dep. Exhs. 21, 24, 25 and 26, June and July 1961)

Salaman stressed the need for "immediate action" to preserve the "effectiveness ... [of] the code of ethics."

(Bauman Dep. Exh. 61-A, May 1961)

Sargent's franchised distributor in Denver, who bid $13,000 more than Booher and lost the job, advised that the distributors "in this and other areas" were "deeply concerned" about the matter and the prevention of "raids" on masterkey jobs.

(Bauman Dep. Exh. 61-D, June 1961)

An investigation report to Merrill, ASAHC's executive director, and Veihmeyer, its president, concluded that Booher had violated the "code of ethics,"

> even though he did quote the Denver job in complete accordance with the plans and specifications, because .. he would have to secure the Sargent items through a source other than his normal suppliers.
>
> (Bauman Dep. Exh. 61-L, August 1961)

The following defendants were represented at the ASAHC's Board of Directors meeting on October 14, 1961, which voted to expel Booher: McCulloch (Russwin); Booth and Bauman (Corbin); Elmblad (Sargent); and Dickenson (Yale).

(Bauman Dep. Exh. 60-B, October 1961)

Even after expelling Booher, the defendants continued to harass him through the ASAHC on the "matter of ethics." In

mid-1962, Corbin's general sales manager, Carl Bauman, alerted Merrill to Booher's bid on a Corbin masterkey system at the University of Kansas Medical Center and argued "that strong measures be taken by all Society members in the State of Kansas." Merrill assured that this incident could be used to reject Booher "should he ever apply for reinstatement," and exhorted Corbin to "pick up the cudgel" and pursue Booher "to the bitter end."

> It will only be because of such action that such a fellow like Booher can be stopped.
>
> (Bauman Dep. Exh. 91, July 1962)

Bauman "stopped" Booher by refusing to fill any order for the University of Kansas Medical Center.

(Bauman Dep. Exh. 90, July 1962)

A similar complaint from a Russwin dealer in 1963 regarding Booher's bid on the Russwin masterkey at Southwest Missouri State College was tagged to block Booher's reinstatement. Merrill, with a carbon to Russwin's vice-president, assured the complainant:

> You can rest assured that our Society has a strong code of ethics, with a special statement of record issued by the Board of Directors on the ethics of master keying. You have encountered the exception rather than the rule.
>
> (AS-1407, October 1963)

(c) The termination and suspension of Louis Carr for breaking masterkey systems.

Yale disciplined Louis Carr for his "ethical" lapses by terminating him as a contract hardware distributor and then assisting to suspend him from the ASAHC.

In the late 1950's and early 1960's, Louis Carr of Anderson & Ireland, Yale's Baltimore account, upset the Baltimore market by submitting competitively priced bids on masterkey

extensions, in which he offered to supply brands other than those specified.

(Talgo Tr. 482, 484-485)

In a letter to the ASAHC's executive director Merrill, Howard MacCarthy, Sargent's Baltimore account, described Carr's infraction of the ASAHC's ethical restraints:

> This young gentleman has it in mind, I believe to completely change the entire distributing system of builders hardware in this country. He does not believe in exclusive franchises, he does not believe in cooperation with competitors, whether they be fellow members of NBHA or AHC, he does not believe in respecting master key systems....
>
> His bids are invariably very low, and therefore are establishing the "market price" for hardware in this area.

(Bauman Dep. Exh. 62-P, August 1961)

Complaints of Carr's substitute bids were relayed by Yale's salesman Hal Fallows and regional sales manager, Ken Lanyon, to their superior Harry Talgo.

(Talgo Tr. 482)

Yale took contract account status away from Anderson & Ireland in 1961.

Expulsion proceedings then commenced with a formal complaint, by MacCarthy Company, joined by Hal Fallows and Sargent's Baltimore salesman James Stephens.

(Talgo Dep. Exhs. 62 and 63, April and July 1962)

The attack focused on the Patapsco Neck School job, a Yale masterkey addition, which "ethically" belonged to Commercial Hardware, but which Anderson & Ireland successfully bid and keyed locally.

(Talgo Dep. Exh. 66, August 1962; Bauman Dep. Exh. 62-L and DD, October and August 1962)

The ASAHC required and received "a statement from Yale & Towne that they did not furnish lock keys [for Patapsco] ... to Anderson & Ireland or to anyone else."

(Bauman Dep. Exh. 62-Z, July 1962)

With Yale's statement, the ASAHC's Board of Directors, on the motion of Russwin's McCulloch and the second of Yale's Tom Dickenson, suspended Carr.

(Bauman Dep. Exh. 62-L, October 196

Sargent salesman Dave Winn and Yale employee Les Groves were also present.

(Bauman Dep. Exh. 62-H, October 196

It is significant to note that the ASAHC's files also contain Anderson & Ireland's letter of termination fro Leo Pantas, vice-president of Yale,

(Bauman Dep. Exh. 62-BB, June 1961)

and an internal Yale memorandum circulated among the top sales executives advising that Anderson & Ireland "will not be allowed to bid on any contract jobs as we will not honor their orders for any type of Contract Hardware...." */

(Bauman Dep. Exh. 62-CC, March 1962)

(d) Dealers who violated ASAHC's restrictions on competition were threatened with disciplinary action.

Enforcement of defendants' conspiratorial agreements often were effected by measures short of expulsion or suspension from the ASAHC. One such incident arose from a complaint by Wagstaff Hardware Company to Russwin that J. A. Konopka of Builders Manufacturing Co. in Birmingham submitted the low bid

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*/ None of these documents was found in Eaton's files.

in March 1964 for an extension of a Russwin masterkey at a Housing Project in Sheffield, Alabama.

(Bauman Dep. Exh. 66, April 1964; AS-590-594 and 596, March 1964)

Wagstaff complained directly to Glenn Wiley, Russwin's southern sales manager, and attached a copy of the bid submitted by Builders Manufacturing Co. By corporate memorandum, Wiley advised McCulloch that Wagstaff had not yet made a formal complaint to the ASAHC and asked "if there is any procedure of warning Konopka that this instance will be held over his head if it should re-occur."

(AS-595 and 596, April 1964)

This internal Russwin memorandum, as well as the letter of complaint that Wiley received from Wagstaff, were forwarded directly to the ASAHC for disciplinary action.*/ Thereafter Merrill, executive director of the ASAHC, warned Konopka, with a carbon copy to McCulloch:

> This is to inform you that you are operating in direct conflict with the Code of Ethics of the American Society of Architectural Hardware Consultants and the statement of record by the Board of Directors dated December 18, 1962....
>
> As yet no formal complaint has been filed against you, but this is to bring the matter to your attention, and we sincerely hope that you will be guided accordingly.
>
> (Bauman Dep. Exh. 67, May 1964; AS-589, May 1964)

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*/ Both documents were found in the ASAHC's files.

3. Enforcement through local chapters.

Defendants utilized the ASAHC's local chapters to disseminate and enforce their restraints through the initiation and investigation of complaints.

(Wheatley Tr. 42)

Local chapters provided:

> A meeting place for discussion on questions of local application of the Society's code of ethics, means of assuring local adherence and how to deal with breaches thereof.
>
> (Bauman Dep. Exh. 35-F, Sep. 1958)

The following incidents illustrate chapter involvement in

"weeding out ... undesirable and unethical characters,"

(E-11661, February 1960)

"maintaining specifications, and honoring of masterkey systems."

(Bauman Dep. Exh. 35-D, Sep. 1958)

(1) At the February 7, 1963 New England chapter meeting attended by Ilco's contract hardware product manager George Wheatley, Corbin's general sales manager Geddes Parsons read a letter from a Corbin salesman,

(Parsons Dep. Exh. 4, February 196
Parsons Tr. 42)

which stated:

> One of the functions of our chapter is to settle the grievances of our industry....
>
> In recent months, there has been a surge of tactics, which borders on "stretching of ethics to suit the circumstances." We all realize that almost every master key system can be broken, in one way or another. Our Code of Ethics, in this respect, is not elastic to suit one's immediate whim. We must all honor - above everything else in our industry - an established master key system.
>
> (Wheatley Dep. Exh. 2, December 19)

This letter was circulated to all chapter members.

(AS 1041-1043, February 1963)

(2) At the April 12, 1962 Connecticut chapter meeting attended by Corbin's sales manager Parsons and Ilco's George Wheatley, there was discussion of a report submitted

to the membership by the Ethical Practices Committee and the new hardware sales policy of Fenestra, a large Sargent account which manufactured doors.

(Parsons Dep. Exh, 3, April 1962)

(3) On February 20, 1962 the ASAHC's Gulf Coast chapter censured Lloyd Schmidt of Sargent's Miami account for bidding (i) an addition to the Schlage masterkey at the Fort Walton Hospital, and (ii) an addition to the Corbin masterkey at Crestview Hospital. Schmidt's fault lay in bidding "jobs on which he hasn't access to legitimately" and failing to honor a competitor's specification.

(Bauman Dep. Exhs. 68-A and B, February 1962)

(4) When Melcher-Schene, a St. Louis dealer, secured the order for an addition to the Corbin masterkey at St. Bartholomew School in 1962,

(Bauman Dep. Exh. 14-A, March 1962)

Henges Company, the local Corbin dealer complained to Corbin's sales manager Bauman and asked "that the necessary steps ... be taken against efforts of Mr. Martin to obtain hardware from other sources."

(Bauman Dep. Exh. 14-A, March 1962)

In response, Bauman urged Henges to bring this "violation of the code of ethics" before the local chapter's grievance committee. In the meantime, he "assured" Henges that:

> [W]e are not going to allow Melcher-Schene to order and be able to buy cylinders.... I will see that everybody is alerted on it and we will certainly turn anybody down.

(Bauman Dep. Exh. 14-C, March 1962)

(5) A special meeting of the Great Lakes chapter was convened in November 1961 under the chairmanship of Sargent salesman William Healy to consider evidence regarding a charge that a manufacturer's sales representative had helped break a Russwin masterkey system at the Filtration Plant in Chicago. Among the 18 members present were Russwin's sales manager Whyte, Yale salesman Puhek and the local dealers for Russwin, Sargent, Ilco, and Corbin.

(Healy Tr. 90-92)

The meeting minutes include the discussion that it was

> [A] violation of the ethics of the ASAHC to "break" an existing masterkey system.

(Healy Dep. Exh. 4, November 1961)

IV. DAMAGES CAUSED BY THE ELIMINATION OF COMPETITION

A. Defendants' conspiracy was intended and operated to inflate prices of contract hardware purchased by public agencies and other owners of buildings.

The agreement among defendants to keep distributors from bidding on other manufacturers' masterkey jobs (or bootlegging contract hardware) was designed to maintain prices in excess of competitive levels. It enabled both manufacturers and distributors to "gouge" the plaintiffs, against whom the industry-wide policy was directed. Dave Oaks, a salesman for Russwin and Sargent, explained the reason for the illegal agreements not to break masterkey systems:

> A Well, on a master key job, number 1, the manufacturer would not have to give a price concession, and number 2, it gave the distributor an opportunity to basically put any markup on the job he wanted. It was a non-competitive job.
>
> (Tr. 36-37)

> A ... on a master key system the manufacturer would not have to cut the price, and looking at it from the distributor's point of view, the distributor could gouge the job; he could put as much markup on it as he wanted.
>
> (Tr. 39-40)

> A The master key system was the plum of the industry.
>
> (Tr. 50)

The defendants' sales restrictions and the ASAHC's "code of ethics" manifested the industry-wide understanding that price competition "can become most unpleasant for all of us and no one will make any money." (Emphasis added)

(Bauman Dep. Exh. 19, April 1963)

Russwin insisted that its distributors not interfere with an existing masterkey job:

> This not only makes good business sense but it is one of the main points of ethics of our industry

and the A.S.A.H.C. For if the continuation of master key systems isn't respected by all, this would break down the economics and frankly, the making of reasonable profits for our industry.... (Emphasis added)

(Maher Dep. Exh. 6, March 1963)

The economic basis for this restriction was readily apparent. As McCulloch explained to one dealer:

> I don't [think] it necessary to ever give a contractor a bid for comparison purposes only. In other words, you try to keep the other fellow honest for he will only retaliate in a like manner in the future. Naturally, contractors are always trying to buy as cheaply as they can, particularly after the bids are in. They like to put the money, that they save by bid peddling, in their pocket or knocking the low bid down that they receive to get the job. In a case of where we have a key system and other products are involved, I think we should let sleeping dogs lie. Simply tell the contractor that you are too busy to give him a figure or that you can't bid on the material as specified and let it go at that. When you put a figure in, if the other fellow has, let's put it frankly, "loaded it", then you are going to make him look pretty foolish and this of course is where the ill feeling creeps in.
>
> (O'Neill Dep. Exh. 12, June 1963)

In this connection, McCulloch wrote another dealer in 1956:

> The other thing, which we have already been into, is the masterkey situa ion. I don't believe we need to rehash that except to state that where an existing masterkey has been started by another dealer, we feel that other dealers should respect that so that the dealer starting that original system can make some money on the addition as that is one of the few places in this business of ours that our dealer can recap and make a little profit and there is nothing wrong with that, I am sure you will agree.
>
> (Lichtenfels Dep. Exh. 38-A, May 1956)

This "industry policy" was supplemented by more specific illegal joint action. For example, McCulloch instructed a distributor in Dallas, Texas, to reach "an understanding such as they have in Los Angeles" with dealers of other manufacturers in order to maintain "net prices."

(McCulloch Dep. Exh. 12, December 1962)

Defendants had dealers police each other because, in McCulloch's words, "if we embark on a deliberate policy of breaking Master Key Systems ... the ones that will lose, will be the distributors; actually everyone will because their profits will be greatly lowered."

(E-10,989, February 1963)

B. Defendants required their dealers to submit collusive bids to keep contract hardware prices at inflated levels.

Defendants maintained non-competitive prices despite the statutory requirements for competitive bids on public works by arranging to have their distributors submit so-called "complimentary" bids, or collusive bids at prices higher than the protected distributor. (On masterkey work, the protected distributor was already secure from any interference by dealers of other defendants). These bids were arranged as "the means of having the owner and the architect believe they were getting competitive bids from two sources."

(McCulloch Dep. Exh. 38, March 1962)

Arrangements for the submission of collusive bids was an industry wide practice among all defendants. As Dave Oaks, salesman for Emhart and Sargent, admitted:

Q Did you on any occasion discuss the giving of complimentary bids with salesmen from other manufacturers?

A Yes. We were all doing it.

(Oaks Tr. 81)

Several incidents recorded in the documents obtained from defendants illustrate this illegal practice.

1. The University of Connecticut (1968).

In March 1968, Sargent got four New York distributors to "cooperate" on the job at the University of Connecticut, which had been reserved for the local distributor, Jack O'Keefe. The Sargent sales representative reported that the four distributors had been contacted and "all will bid over $3,500."

(Thompson Dep. Exh. 25, March 1968)

Sargent's eastern sales manager, Thompson, commended the sales representative.*/

(Thompson Dep. Exh. 28, March 1968)

2. The United States Courthouse in Chicago (1965)

By memorandum dated November 11, 1965, William Healy, Sargent's midwest sales representative, reported to Eli Yale, vice-president sales, that:

> When the federal bldg [in Chicago] started to put out bids about a year ago I arranged to have Ken Lee's quotations complimented by Dave Oaks & Great Lakes.... After all Ken Lee has put a great deal of time and money into the federal bldg. job and the continuing business should be available to them -- at a profit.
>
> (Rhynedance Dep. Exh 12)

With reference to this incident, Dave Oaks testified as follows:

> A A complimentary bid is a bid that a distributor would submit which would be higher than the distributor whom the order was meant to go to. It is a rigged bid.
>
> Q As a Sargent distributor were you ever requested to submit a complimentary bid?
>
> A Yes.... By Bill Healy of Sargent.

---

*/ It was necessary to secure the "cooperation" of the New York dealers because they received special lower prices for contract hardware.

Q On what jobs did Mr. Healy ask you to submit a complimentary bid?

A Abbott Laboratories in North Chicago, replacement materials for the Federal Building --

The Illinois Tollway Commission, replacement materials. There were a couple of others, but I can't recall exactly what jobs they were on.

Q What, exactly, did Mr. Healy say to you when he asked you to submit complimentary bids?

A He said that Ken-Lee's price was such-and-such and to bid higher than Ken-Lee's price.

(Oaks Tr. 73-74)

3. The West End Baptist Hospital (1964).

Under Emhart's sales policy to prevent competition among distributors on existing masterkey jobs, Wagstaff Hardware was assigned the West End Baptist Hospital in Birmingham, Alabama. When an addition to the hospital was constructed in 1964, bids were solicited from general contractors in Birmingham and Montgomery, Alabama; New Orleans, Louisiana; and Houston, Texas. The specifications stated that the addition would be keyed to the existing Russwin masterkey system. Russwin then arranged to protect Wagstaff by having other distributors submit collusive bids above $50,000 to the out-of-town contractors. The bids were arranged by Russwin's southern sales manager, Glen Wiley, as follows:

Russwin Dealer	Location of Contractor	Price	Alternate
Stauffler-Ashleman & Co.	New Orleans	$51,349.00	$725.00
Billings Southwest	Houston	$51,545.00	$769.00
Morton Sales	Montgomery	$50,997.00	$675.00

(Wiley Dep. Exhs. 29 and 30, undated)

A summary of the collusive bids that Russwin directed was handwritten by Wiley.*/

(Wiley Dep. Exh. 30, undated)

Moreover, Emhart's files contain two of the memoranda by which Wiley instructed the individual distributors to submit the collusive bids of $51,349 and $51,545 to general contractors in Louisiana and Texas.

(McCulloch Dep. Exhs. 36-A and B, February 1964)

4. Akron General Hospital (1966).

By letter of November 9, 1966, regional sales manager Rhynedance advised that the local Sargent salesman had requested that Standard Equipment & Supply submit a collusive bid on the Akron General Hospital to protect Cleveland Vicon Supply (Don Poe). Rhynedance stated: "In the event [Standard Equipment & Supply] asks an opportunity to bid the job, I will see that he contacts Don Poe for a price for his general contractors."

(Rhynedance Dep. Exh. 13-A, November 1966)

5. New institutional buildings, Maryland Department of Correction.

Sargent's regional sales manager, A.E. Gray, instructed local salesmen to prevent dealers in the New York and Philadelphia areas from bidding on an extension to a masterkey system "established by our Baltimore account, the MacCarthy Company."

> In the event that one of your distributors should be asked for price and he feels he should oblige that contractor with a price, it is my suggestion that you contact Jim Stephens or MacCarthy in Baltimore for price.

(Gray Dep. Exhs. 31 and 32, August 1964)

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*/ When asked about this incident, and from whom he received directions, Wiley suffered the total lack of memory characteristic of witnesses in this case. (Wiley Tr. 200-209)

6. The elementary school in Bedford, New Hampshire.

In order to protect Ilco's local distributor on a "master key job" and yet to satisfy the architect's request for a second bid, George Wheatley, Ilco's contract hardware product manager, instructed his salesman to arrange for submission of another quote at $5,500.

(Wheatley Dep. Exhs. 11 and 11-A, November and December 1966)

7. Hopkins County Hospital.

In 1965, Schiller Hardware informed Ilco that an addition to the Hopkins County Hospital would "be keyed in with our master key system" and requested Ilco to keep other dealers from quoting general contractors. Wheatley thereupon told his salesmen to make certain their respective dealers "do not bid on this job" or "upset the applecart."

(Wheatley Dep. Exhs. 16, 17 and 18, November 1965)

A year later, one of the other dealers complained to Ilco that for five years it had been forced to lay off jobs for Schiller Hardware.

(Wheatley Dep. Exh. 19, June 1966)

8. The Veterans' Hospital at Bedford, Massachusetts.

By letter of February 18, 1965, Wheatley wrote to Morris Falk, an Ilco salesman:

> Just a note to confirm my telephone call to you advising that the same Chicago Contractor who placed an order with Howell [Ilco's Chicago dealer] several years ago for the above facility, has another job there now.
>
> This work will be tied in with the masterkey system as was the previous job.

> To forestall complications again with our Boston Distributor, Shawnut Supply who established the masterkey for this project, I requested that you contact Walter Howell and see that they do not accept an order from this contractor. If it is necessary to save face that they quote him a price, let me know and I will secure the figure which to quote....

Falk responded:

> Walter informed. He will not quote. However, if the customer insists that he do so, he will not accept or give a complimentary bid. He wants to be clean with Uncle Sam. In such case he will take off the job and quote a high figure. (Emphasis added)
>
> (Wheatley Dep. Exh. 6, February 1965)

9. The University of Vermont (1965 and 1966).

(a) In June 1965, Harry Ambrose, Yale's Vermont account, wrote Yale salesman John Tooher that he expected "full cooperation from all Yale distributors" on the University of Vermont Medical Building job.

(Talgo Dep. Exh. 50, June 1965)

Tooher queried contract hardware marketing manager Harry Talgo about this request:

> Can we count on cooperation of Dave Eskin [Yale's Boston account] and any other New York contract account who might want to bid on job?
>
> (Talgo Dep. Exh. 51, June 1965)

Talgo responded with these instructions to Yale's northeast regional sales manager Davenport Cleveland: "Dave - Keep the wolves off."

(Talgo Dep. Exh. 51, June 1965)

Within days, Cleveland reported to Talgo that Yale's New York account had agreed to submit a complimentary bid.

(Talgo Tr. 439)

> As requested by Harry Ambrose and John Tooher I have discussed above job [University of Vermont Medical Building] and he has agreed to cooperate on the initial bid.
>
> (Talgo Dep. Exh. 52, July 1965)

(b) With respect to the University of Vermont Life/Science Building Tooher wrote Cleveland:

> Harry Ambrose requests that other Yale bidders - i.e., Dave Eskin & Elmer Hebert submit complimentary bids if asked to bid.
>
> (Talgo Dep. Exh. 53, January 1966)

Cleveland urged the following illegal course:

> Arrangements such as this must be worked out between the accounts themselves. I will indicate our wishes to Tom Hebert and will have [Yale salesman] Tom Wemyss do the same to Eskin, but will be up to Harry Ambrose to contact each and work out the deal.
>
> (Talgo Dep. Exh. 54, January 1965)

Other examples of Collusive Bidding.

10. McCulloch Dep. Exh. 37: Memorandum from O'Neill to McCulloch, August 19, 1964.

> O'Neill asks McCulloch how to arrange for a complimentary bid in Hawaii. McCulloch writes back: "Suggest they bid 33-1/3% [and] TH-D bid 25% or a little less. What about 3rd bidder."

11. Wiley Dep. Exh. 11: Memorandum from Wiley to McCulloch, March 17, 1963.

> Upon request for protection by Arkansas Builders Supply, Wiley asks McCulloch and the local Russwin salesmen to prevent any Corbin or Russwin accounts from bidding on jobs at the University of Arkansas.

12. Wiley Dep. Exh. 9: Letter from Arkansas Builders Supply to Wiley, April 1, 1963.

> Arkansas Builders Supply requests Wiley to "advise other R & E dealers ... to please 'stay off'" an extension to the Methodist Nursing Home. Wiley's handwritten notation shows that he wrote the competing dealer in Arkansas, with copies to Arkansas Builders Supply and the local Russwin salesman.

13. Wiley Dep. Exh. 12: Memorandum from May to McCulloch, June 23, 1962.

> May, the local Russwin salesman, tells McCulloch, with a copy to Arkansas Builders Supply, that Arkansas Builders Supply has advised him that "they suspected" the contractor who submitted the low bid "was going out of state for an R & E hardware price" on the Helena, Arkansas Hospital. He therefore asked McCulloch to stop other dealers from quoting on the job and stated: "I am writing to my accounts requesting that they not put out a price."

14. Wiley Dep. Exh. 46: Memorandum from Wiley to McCulloch, May 22, 1964.

> Wiley reports that he arranged for Arkansas Builders Supply to compliment bids submitted by the protected dealer Hutt Building Material on a job at Arkansas A, M & N College.

15. Wiley Dep. Exh. 44: Memorandum from Wiley to W. S. Lee Co. (Tallahassee, Florida), May 15, 1962:

> Upon request from W. S. Lee Company that other dealers not "interfere" on bids for additions to several public schools in Georgia,
>
> (Wiley Dep. Exh. 43)
>
> Wiley advised W. S. Lee: "I talked with Gordon at Stump Bros. and explained the above are your key systems. He agreed to go along. Lon Shaddrick actually handles this type work. Gordon will talk with him and I suggest that you call Shaddrick and give him figures to use as a comp. bid. Refer to my conversation with Gordon."

16. Lichtenfels Dep. Exh. 14: Letter from Lichtenfels to Piedmont Hardware & Supply Co., April 18, 1966:

> Lichtenfels thanks Piedmont Hardware for its "cooperation" with Russwin and another dealer by withdrawing its bid after Russwin advised that Piedmont had bid on addition to Catoosa County Schools in Atlanta, Georgia, "when we should not have done so."
>
> (Lichtenfels Dep. Exh. 13)

17. McCulloch Dep. Exh. 22: Memorandum from Maher to McCulloch, December 30, 1969.

> Maher advises that he has gotten a non-local dealer "not to quote any figures on the Deershead State Hospital in Salisbury, Maryland."

18. McCulloch Dep. Exhs. 39 and 40: Letter from McCulloch to Tri-State Builders Hardware Inc., July 18, 1962.

> "I have been advised by Smith Brothers that they have a job coming out for bids ... I hope you will cooperate with them as we have tried to have various accounts around you cooperate in similar situations."

McCulloch Dep. Exh. 41: Letter from McCulloch to Smith Brothers Hardware Co., July 30, 1962, with a copy to Tri-State Builders.

> "I have had a reply from Mr. Hoffmanster of Tri-State Builders Hardware regarding the University job that is going for bid at Athens on August 14. They state they will not take the job off but would like to have someone from Smith Brothers contact them prior to bid time.
>
> Will you please do this."

19. Wiley Dep. Exh. 31: Memorandum from Wiley to McCulloch, January 5, 1963.

> Wiley advises that Wagstaff Hardware Company was "able to control the bidding [on the Florence, Alabama courthouse] with the possible exception of Belnap" and asks McCulloch to "alert Belnap to stay off the job."

C. The impact of defendants' illegal agreements and concerted action upon prices of contract hardware.

The conspiracy inflated prices of contract hardware in several different ways. Defendants sell contract hardware only through their own established or "franchised" contract hardware dealers; dealers then sell all contract hardware for construction jobs as a package. Consequently the conspiracy enabled defendants and their dealers to obtain prices above competitive levels for all contract hardware required on master key jobs.

1. Defendants fixed and stabilized prices of contract hardware above competitive levels.

The defendants met and exchanged price information in order to keep their list or book prices at non-competitive levels. This arrangement included not only prices to contract hardware dealers, but also prices to metal door manufacturers, such as Ceco and Fenestra. Moreover, defendants took concerted action to stabilize the prices quoted for contract hardware by dealers on masterkey work.

2. Defendants gave no price concessions to dealers on additions of masterkey systems or other protected work. This factor alone inflated the prices 10-20%.

When faced with competition on some new jobs, defendants would give their dealers price concessions of 10 to 20% off the book prices. Price concessions of 10% were often left to the discretion of the regional sales managers.

(Gray Dep. Exh. 26, August 1966)

Because there was no real competition on additions to existing masterkey systems, however, defendants refused to give any concessions or "special discounts" to dealers.

(Kazmer Dep. Exh. 15, July 1964;
Materne Dep. Exh. 22, July 1965;
Rhynedance Dep. Exhs. 10 and 18, March and May 1966;
Talgo Dep. Exh. 73, June 1965;
Gray Dep. Exh. 11, May 1959;
Gray Dep. Exhs. 12 and 13, January and July 1962;
Gray Dep. Exhs. 14 and 15, March and April 1964;
Gray Dep. Exh. 16, April 1966;
Gray Dep. Exhs. 17 and 18, October and September 1963;
Gray Dep. Exh. 46, February 1964;
Gray Dep. Exh. 47, May 1966)

As a result of infringement on masterkey jobs or protected territories, defendants were sometimes forced to give discounts off the book prices to protected dealers. These

discounts ran as high as 20%.

(O'Neill Dep. Exh. 7, July 1969)

Ordinarily, though, dealers were expected to put hefty mark-ups on masterkey additions, so no price cuts had to be given by the manufacturers.

(Pantas Dep. Exh. 15, March 1962)

As Henges Hardware wrote to Corbin in response to criticisms about its bidding practices:

> We had a 32 percent markup on this job because it was a closed master cylinder specification and also because we understood and were told by you folks, that jobs like this should carry a 33-1/3 percent markup.
>
> (Kazmer Dep. Exh. 17, May 1963)

In a similar circumstance, a dealer informed Russwin that:

> They put a third markup on anything they bid to the State [of Florida], and they do not feel that they are cutting prices or trying to undermine any master key system.
>
> (Wiley Dep. Exh. 14, January 1961)

Another dealer accused of breaking a masterkey system explained that he had to keep contractors happy; so he had used book prices and added 33-1/3%.

(Wiley Dep. Exh. 34, May 1961)

Other dealers put 50% mark-ups on bids to show a competitor that they were "not really after his master key."

(McCulloch Dep. Exh. 44-B, May 1965)

In addition, price concessions were not given on jobs specifying another manufacturer's hardware,

(Gray Dep. Exh. 26, August 1966)

or on jobs outside a dealer's assigned territory.

3. Dealers raised prices on additions to master key systems and other protected jobs.

The conspiracy enabled dealers to charge inflated prices for those jobs that were protected. These prices ranged from 20 to 50% above competitive levels.

(Maher Dep. Exhs. 7 and 8, March 1963)

As Bauman stressed to a Corbin dealer:

> [I]t is always our intention to protect our distributor's master key system ... the matter of master keyed protection is one of the so-called "sacred cows" of the builders' hardware industry and happens to be a so-called "fringe benefit" for any builders' hardware distributor.
>
> (Bauman Dep. Exh. 26, Nov. 1961)

The industry recognized that dealers were entitled to larger mark-ups on masterkey extensions.

(Healy Dep. Exh. 4, November 1961)

Reporting on the investigation that preceded the federal government's civil suits, Sargent salesmen told Eli Yale that an FBI agent had asked one dealer many questions pertaining to "the hardware industry's pricing policies on masterkey work versus competitive work." (Emphasis added)

(Yale Dep. Exh. 1, Sep. 1967)

Defendants acknowledged in memoranda that masterkey jobs ordinarily did not involve "actual competitive conditions,"

(McCulloch Dep. Exh. 43, May 1961)

and recognized that because of their illegal agreements additions were sold at inflated prices, or in the words of Yale's Boston dealer, D. H. Eskin, at a "higher cost."

(Talgo Dep. Exh. 70, March 1966; Talgo Dep. Exh. 42, December 1964)

D. The measure of damages may be calculated from evidence that actual competition in violation of defendants' illegal agreements substantially reduced prices for these jobs.

The conspiracy effectively prevented competitive bids, but there were occasions when distributors "cheated" and obtained jobs at prices far lower than the figures quoted by the protected dealers, or forced the protected dealer "to drop his price."

(Thompson Dep. Exhs. 11-14, Arpil-May 1965)

The defendants, of course, would not sell hardware to these maverick dealers if the order were caught. For instance, one Russwin dealer was asked to submit a complimentary bid at $4,650 on a job with a cost of $2,355; instead, because he did not want to offend the architect, the dealer secured the job at $3,300 or 40% mark-up. Emhart refused to fill his order, advising him to buy the materials through the protected dealer.

(Lichtenfels Dep. Exhs. 11 and 12, March 1966)

Some examples of the price differentials between protected and competitive work are listed below.

(1) A Russwin salesman reported to Lichtenfels in July 1968 that the conspiracy had broken down in Tennessee and "this had brought about a condition of most every account disregarding everyone else's key system." As a result:

> [T]o secure a job any more you have to beat the manufacturers down to the lowest possible figure before the bidding and then take a gross profit mark-up between 5% and 10% and the size of the job does not seem to make any difference.
>
> (Wiley Dep. Exh. D, July 1968)

This would compare with the 33% and higher mark-up which dealers usually put on masterkey jobs.

(2) Subsequent to the consent decree in the federal government's civil actions, Corbin refused to sell hardware to a dealer, New Market Hardware Co., who was the successful bidder on an order from the City of St. Louis. Corbin told New Market that the order was "tied in with a masterkey contract belonging to the Henges Company."

(Kazmer Dep. Exh. 2-A, April 1970)

This refusal to deal forced St. Louis to purchase hardware from Henges at a "higher non-competitive price," 50% above the price quoted by New Market Hardware Co.

(Kazmer Dep. Exhs. 3, 4, 5 and 6, Feb. and Mar. 1970, and Nov. 1969)

(3) Warner Hardware Co. of Minneapolis reported to Corbin that it bid $10,700 on an existing masterkey system, but "to our complete amazement, Hobbs Supply (Russell Erwin Dealer) bid the job at $7,700 which is approximately our cost."

(Parsons Dep. Exh. 13, June 1961)

(4) On a contract hardware project for a new elementary school tied to an existing masterkey system in Topeka, Kansas, the Sargent dealer bid $4,675, or 36% above book cost of $3,392; the Yale & Towne account took the job at $4,600.

(Yale Dep. Exh. 4, April 1963)

Sargent thereupon put a "stop" on any order for that masterkey system.

(Yale Dep. Exh. 5, April 1963)

(5) Bauman complained to McCulloch that a Russwin dealer had taken a job in a Corbin dealer's area cutting prices 10%, adding: "I can't understand why Mike wants to 'bomb' jobs outside of the Houston area and cause a price battle."

(Bauman Dep. Exh. 76-A, March 1964)

(6) By memorandum dated March 6, 1964, Gray reported to Eli Yale that a Sargent dealer had taken a job outside his area by cutting prices approximately 10%.

(Gray Dep. Exhs. 49-A and 49-B, March 1964)

(7) Upon complaint that Hudgins & Sons took a masterkey extension at a 20% mark-up when the protected dealer added 33-1/3%, Sargent refused to fill orders from Hudgins, forcing it to buy the hardware from the protected dealer.

(Thompson Dep. Exhs. 15, 16 and 17, December 1965)

(8) A maverick Russwin dealer bid on Sargent specifications for the Washburn University in Kansas, taking the job at $46,200, while the Sargent account bid $54,484, or a mark-up of 50% on its cost of $36,322.

(Rhynedance Dep. Exh. 20-B, March 1969)

Sargent prevented the bootlegging of the hardware.

(Rhynedance Dep. Exhs. 20-A and 20-C, May 1969)

(9) By "disregarding" the specifications that an elementary school be "keyed to the existing Corbin system," a maverick dealer cut prices more than 15%.

(E-9600, February 1962)

(10) In 1963, Glass, Sash & Door, a Russwin account in Alaska, "bid into a job which was specified" as a continuation of a Corbin masterkey system and took the order at a mark-up of 50% above cost plus freight. Although the job was located in Palmer, Alaska, the protected dealer was located in Seattle, Washington.

(Bauman Dep. Exhs. 32 and 33, August 1963;
O'Neill Dep. Exhs. 16 and 17, August 1963)

(11) A Sargent masterkey system was broken by a maverick dealer who bid $1,450, or more than 20% below the protected dealer's price of $1,864 on materials having a cost of $1,280.

(Rhynedance Dep. Exhs. 17-A and B, June 1965)

(12) McCulloch complained to Deady, regional sales representative, that a maverick Russwin dealer had cut his mark-up to 5% and taken a job "that was set up for Howell [the Ilco dealer] and Morrison [the local Russwin dealer] was going to cooperate because he was going to get something in the future."

(McCulloch Dep. Exh. 14, March 1962)

The influence of competition upon prices set by defendants may also be illustrated by reference to the situation in New York City. Despite the effective efforts by defendants to allocate jobs and customers among dealers in metropolitan New York, the concentration of population caused rather strong competition to remain. Consequently, defendants adopted the practice of giving additional or "confidential" 10% discounts off book prices to the New York City dealers.

(E.g., Materne Dep. Exhs. 21 and 2 April and July 1965;
Gray Dep. Exh. 17, October 1963;
Gray Dep. Exh. 52, undated;
Gray Dep. Exh. 57, December 1963)

V. DEFENDANTS ELIMINATED PRICE COMPETITION AMONG THEIR OWN DEALERS BY ALLOCATING MASTERKEY JOBS AND ASSIGNING DEALERS TO EXCLUSIVE TERRITORIES

The defendants implemented and reinforced their horizontal conspiracy to protect masterkey jobs from competition by allocation of masterkey systems and territories among their own dealers. These illegal vertical agreements gave distributors complete protection on masterkey jobs in their assigned territories. Consequently, dealers accepted restraints imposed by defendants on competition and helped to enforce these restraints.

A. Prohibition against bidding on another dealer's masterkey system.

Besides agreeing and taking concerted action to eliminate interbrand competition on existing masterkey systems, each defendant prohibited its dealers from selling hardware to extend masterkey systems that had been originated by a fellow dealer, or assigned by defendant to a fellow dealer. Because defendants kept the keying records for all projects at their factories, organized by state and type of building, they were able to control the dealers through whom they sold contract hardware for masterkey jobs.

It was understood in the industry that existing masterkey systems belonged to the defendants who, in turn, allocated them among their respective dealers. For instance, if a dealer went out of business or began to represent another manufacturer, the masterkey jobs recorded in his name at the factory were then given to other dealers.

(Bauman Dep. Exhs. 74-A and 74-B, December 1964;
Talgo Dep. Exh. 9-C, March 1962)

As George Rhynedance explained to a Sargent salesman:

> In the transition of any marketing area the masterkeys in that marketing area become the property of the new customer by Sargent's decision. Masterkeys actually are the property of Sargent & Company, not the customer.
>
> Customers are allowed to bid on masterkeys at our pleasure.
>
> (Rhynedance Dep. Exhs. 15-A and B, October 1966)

The general sales policies of the defendants prohibited dealers from bidding on another dealer's masterkey system.*/

Emhart stated its policy against intrabrand competition in strong language:

> 1. It is the policy of the Corporation to protect master key systems established by either division against breaking or efforts to break the other division's system.
>
> 2. Where it is known that a dealer of either division secures an order on the basis of buying the locks less cylinders from one division and plans to bootleg the required cylinders to continue the system of the other division, the order for locks will be refused by that division.
>
> 3. Where a dealer of one division deliberately and willfully makes an effort to break a master key system of the other division and is successful, that dealer will lose the line.**/
>
> (Lichtenfels Dep. Exh. 31 re. Russwin, August 1959; Bauman Dep. Exh. 79 re. Corbin, August 1963)

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*/ Certain exceptions were made in situations where the restrictions would be so obvious that they make purchasers, especially public agencies, suspicious.

(Gray Dep. Exh. 8, February 1958; Salaman Dep. Exh. 16, May 1962)

**/ These memoranda do not use the phrase "break a master key system" in the technical sense, but rather as a shorthand description of the prohibition against competition for existing masterkey systems.

Russwin (through W.C. Lichtenfels) advised its sales force that it would refuse to sell hardware for an existing masterkey system to anyone other than the originating dealer.

(Deady Dep. Exh. 18, December 1963)

Sargent stated to its sales force:

> It is the policy of the company to furnish additions to masterkey systems through the accounts which originally established the masterkey.
>
> (Gray Dep. Exh. 8, February 1958)

> Additions to masterkey systems will be furnished through the accounts which originally established the masterkey.
>
> (Healy Dep. Exh. 2, June 1962;
> Gray Dep. Exh. 35, February 1964;
> Gray Dep. Exh. 36, February 1964;
> Gray Dep. Exh. 38, September 1964)

Ilco's policy was summarized by George Wheatley:

> For many years it has been the policy of this company that when a new master key system is established, the contract distributor establishing the master key system has a priority claim to that system and no quotations for additional locks keyed into the system will be made to any other contract distributor unless permission is received from the originating contract distributor to do so.
>
> * * *
>
> The above policy applies regardless of the location of the project or the location of the contract distributor.
>
> (Materne Dep. Exh. 17-B, October 1965

Ilco sought to keep close records of masterkey jobs and to "promote a clear understanding" of the protection that Ilco would extend in order to "assure perpetuation of existing and future key systems at profitable prices."

(Hicks Dep. Exh. 5, November 1965;
Hicks Dep. Exh. 6, undated;
Hicks Dep. Exh. 8, October 1964)

Yale: The vice-president of John E. Gannaway & Co., a Yale account in Lynchburg, Virginia, stated in December 1966, in a letter to Yale's order department:

> I quote Mr. Snyder's written remarks to me -- "Our company's policy is to protect the concern that establishes the original Master Key."
>
> (Hettling Dep. Exh. 5, December 19[illegible])

Snyder was a Yale employee who reported directly to Harry Talgo, the general sales manager.

(Talgo Tr. 139-140)

Defendants appointed dealers to sell their contract hardware on the express condition that they not quote on any additions to masterkey systems established by other dealers, unless the job were first cleared with a factory representative.

(E.g., McCulloch Dep. Exh. 24, November 1956;
Wiley Dep. Exh. 2, June 1959;
Wiley Dep. Exhs. 5 and 6, Aug. 19[illegible])

These agreements were written and verbal. For instance, Russwin's Chicago sales manager reported to Lichtenfels in 1965 that the local salesmen

> ... have been instructed as to our policy here in Chicago and are thoroughly familar with it now. All understand that there can be no deviation to it either by them or by the Accounts they are calling on. It is also understood that all master keys must be assigned by me and that if a particular job is not on their Dealer's list they must not bid the job. Such an assignment will be made by me and they will then inform their Dealer of the assignment.
>
> (Lichtenfels Dep. Exh. 37, August 1965)

This policy included hollow metal door manufacturers, such as Ceco, who accepted the restrictions against bidding on existing masterkey systems.

(Deady Dep. Exhs. 9 and 10, July 1965)

Defendants sought approval of established dealers for appointment of new dealers and reassured existing accounts that their masterkey jobs would be protected.

(Maher Dep. Exh. 12, October 1964;
Maher Dep. Exh. 13, April 1962;
McCulloch Dep. Exh. 24, Nov. 1956;
Wiley Dep. Exh. 21, August 1961;
Wiley Dep. Exh. 22, April 1961;
Wiley Dep. Exh. 23, July 1961;
Hettling Dep. Exh. 9, June 1962;
Thompson Dep. Exh. 4, August 1965)

For example, in 1962, Yale's general sales manager, James D. Young, wrote to Pierce, Yale's Dallas account, that "Harley Webb in Fort Worth has taken on our line of contract builders' hardware" and that Young was "concerned with Pierce's request" to be protected from competition by Webb on "Yale masterkeys" that Pierce had "established in Texas." Young urged that Pierce prepare a list of its protected masterkey systems which would be "known by Harley Webb." Such a list, said Young, would spare Yale the "time and expense" of checking each masterkey job as it came up.

(Talgo Dep. Exh. 12, September 1962)

Existing accounts were protected even when the masterkeys they had established were located in a territory later assigned to another dealer.

(Hettling Dep. Exh. 8, May 1962;
Materne Dep. Exhs. 17-A and 17-C,
October 1965)

Dealers were repeatedly reminded by defendants "in no uncertain terms" that they could not infringe on another dealer's masterkey system and that the sales representatives would decide "ownership of the masterkey systems."

(Salaman Dep. Exh. 20, Sep. 1964;
Reilly Dep. Exh. 4, April 1966;
Wright Dep. Exh. 31, January 1966)

For example, James Young, Yale's general sales manager, advised his salesmen:

> I want it clearly understood that no builders' hardware firms who have offices either in Los Angeles or outside of Los Angeles are permitted to bid on any ... masterkey jobs whether set up by the Los Angeles Hardware Company or on any masterkey jobs set up by companies who formerly handled our hardware products ... [Los Angeles Hardware Co.] should be continued to be protected on these systems in spite of the fact that perhaps since setting up the systems we did establish other outlets for builders' hardware.
>
> (Hettling Dep. Exh. 23, March 1961)

In this connection, defendants conducted meetings among their distributors, on national and regional bases, to discuss the prohibition against "breaking of existing master key systems."

(Wright Dep. Exh. 29, July 1964; Yale Dep. Exhs. 31 and 32, October 1963)

At the same time, protected dealers were assured that there would be "no interference on any of the masterkeys you have established or the ones inherited from [former dealers]."

(Gray Dep. Exh. 30, July 1964)

Accordingly, dealers not only cooperated with defendants, but encouraged industry-wide enforcement of the restraints on competition.

(Bauman Dep. Exh. 82, Nov. 1963)

As McCulloch summarized Emhart's policy:

> That has been one of our points in having a RUSSWIN line in an area is that we protect the dealers and ask the dealers to protect each other so that they can make money.
>
> (Lichtenfels Dep. Exh. 38-A, May 1956)

Sargent dealers "agreed that it was not proper to bid the masterkey of another distributor."

(Reilly Dep. Exh. 3, January 1969)

As O'Neill reported to McCulloch:

> Generally our distributors want to comply and conform. What is good for the others is good for them. They share and enjoy the same protection.

(O'Neill Dep. Exh. 11, Aug. 1964)

The system worked effectively to prevent intrabrand competition on masterkey jobs. Still, defendants kept close watch to prevent violation of their "published policy" against bidding on masterkey systems.

(Wiley Dep. Exh. 32, December 1963)

When a dealer sought to compete on jobs belonging to other dealers, defendants were ordinarily able to convince him "to stay off" such jobs and not create problems that would threaten the understandings among dealers.

(Bauman Dep. Exhs. 84-A to 84-C, March and April 1963)

Sometimes rather than try to resolve disputes between dealers, defendants simply refused to fill orders from anyone other than the protected dealer, who could then secure compensation for losing the job. In one such incident, Earl Materne, Ilco's national sales manager wrote a local salesman that Rapid Hardware "was quite upset over the fact that Commercial Hardware, Detroit, bid and was awarded" the hardware contract for an addition to the Collins Elementary School in Grand Rapids, Michigan. Ilco helped arrange an agreement for Commercial to pay $200 compensation to Rapid, but Materne added: "[I]t would be my thinking Commercial should have been told they would have to purchase the hardware through Rapid Hardware at whatever

price Rapid would charge. This would act to prevent further encroachments by Commercial Hardware into other franchised Distributor areas. This would also show Rapid Hardware that we mean business."

(Materne Dep. Exh. 16-A, June 1965)

In response to further explanation from the salesman, Materne directed him in the future to "have the offending distributor buy the goods through the offended distributor. This will prove that we stand by our policy."

(Materne Dep. Exh. 16-C, June 1965

B. Defendants assigned their dealers to specific territories and prohibited them from bidding outside those areas.

Defendants sold contract hardware only through franchised or established dealers. These dealers were assigned a specific geographical region and told not to bid on jobs or sell contract hardware outside that area. In return, each dealer was assured and understood that no other dealers would bid in the trading area to which he was confined.*/

(Lichtenfels Dep. Exh. 40, March 1962)

Defendants strictly enforced their allocation of territories upon complaints of infringement by protected dealers or salesmen.

Defendants prohibited dealers from bidding outside their territories even when the job was located in an area to which no other dealer had been assigned.

(Materne Dep. Exh. 12, Feb. 1964)

In more sparsely populated regions, defendants arranged with

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*/ Exceptions were made in certain large metropolitan areas, such as Chicago and New York, where jobs were allocated according to the type of building project, who originated the masterkey system, or who prepared the specifications.

their dealers to leave buffer zones between assigned territories open to more than one dealer.

These understandings with dealers remained in force despite changes in franchise language in the late 1960's under pressure of federal investigations. For example, in August 1970, Wagstaff Hardware Co., Russwin's account in Sheffield, Alabama, still felt it necessary to ask Russwin's permission to bid on two TVA projects because one was located in Tennessee outside Wagstaff's "trading area."

(Wiley Dep. Exh. 48, August 1970)

Emhart Corporation (Russwin and Corbin)

Russwin and Corbin dealers were given exclusive areas upon their agreement, inter alia, not to bid on jobs or sell hardware outside those areas. For example, William Lichtenfels, now vice-president of Emhart, advised a new distributor:

> Our policy is such that you are to be completely protected on all RUSSWIN specifications that you write in your exclusive area. No other RUSSWIN dealer may enter a bid in your area without your or our permission. All existing RUSSWIN master key systems and any RUSSWIN master key systems established in the future in the above mentioned area, is yours exclusively.
>
> (Lichtenfels Dep. Exh. 38, July 1959)

The following documents illustrate arrangements to allocate territories:

(Wiley Dep. Exh. 1, March 1960;
Wiley Dep. Exh. 3, April 1957;
Wiley Dep. Exh. 4, April 1959;
McCulloch Dep. Exh. 3, May 1956;
McCulloch Dep. Exh. 15, Jan. 1962;
McCulloch Dep. Exhs. 16, 17 and 20, May 1959;
McCulloch Dep. Exhs. 18 and 19, August 1959;
McCulloch Dep. Exh. 28, March 1962;
McCulloch Dep. Exh. 29, June 1965)

Emhart conducted meetings among its dealers to define their territories and to secure agreement from the dealers not to compete in anyone else's territory and to "cooperate with each other."

(McCulloch Dep. Exhs. 6-9 and 11, June and July 1961; Bauman Dep. Exhs. 15 and 16, October and November 1962; McCulloch Dep. Exh. 13, October 1961)

Upon complaint of territorial infringement, Emhart brought the maverick dealer into line and reassured the complainant that it would enforce its sales policy to prevent a re-occurrence.

(Wiley Dep. Exh. 19, April 1966)

A warning to the maverick dealer was usually sufficient.

(McCulloch Dep. Exh. 21-A, Sep. 19[illegible]; Lichtenfels Dep. Exhs. 15 and 16, October 1964, and undated)

In response to a complaint from Adolph Soeffing & Co. in 1964,

(McCulloch Dep. Exh. 2-A, April 1964)

Lichtenfels wrote that the other distributor

> ... was returning the contract for the Lake Track Elementary School to the contractor....
>
> They were entirely wrong in making any effort to go after this particular project, as it was outside of their jurisdiction and they have assured me that they will do everything possible to maintain the good relations between your firm and ours.

(McCulloch Dep. Exh. 2-A, April 19[illegible])

Following a complaint by Pleasants Hardware, Russwin told Burton Lumber Corp. to "refrain from quoting Richmond contractors on all future work."

(McCulloch Dep. Exh. 1-A, Feb. 19[illegible])

Burton readily agreed.

(McCulloch Dep. Exh. 1-B, Feb. 19[illegible])

Thereupon W. J. Ziegenhein, vice-president of Russwin, wrote that Burton's "cooperative attitude ... is most appreciated by us, as well as by Pleasants Hardware of Richmond."

(McCulloch Dep. Exh. 1-C, Feb. 1956)

Otherwise, dealers were simply told that Emhart would not sell them contract hardware for projects outside their assigned territory, or terminated.

(Wiley Dep. Exh. 8, March 1961; Wiley Dep. Exhs. 24-26, Jan. 1961)

For instance, McCulloch advised Binswanger & Co. of Memphis, Tennessee:

> I have just learned through our account in Sheffield, Alabama that you are planning to furnish the finishing hardware for the above two projects through the General Contractor, G.E. Bass, of Jackson, Mississippi.
>
> * * *
>
> Since the particular project involved is located in Sheffield, Alabama which, of course, is outside of your area, we would not be in a position to ship you the RUSSWIN materials involved in these particular projects. I am sure you appreciate that we make every effort to extend protection to our distributors in the particular area they operate and, of course, this would naturally apply to your company in connection with any new masterkey systems which were originated in your trading area.

(McCulloch Dep. Exh. 5, Aug. 1959)

Emhart entered written franchise agreements with its dealers which were designed and understood to restrict the dealers to their assigned territories.

(Lichtenfels Dep. Exhs. 41-44, November and December 1964)

In addition, franchises were set up to exclude dealers from bidding on certain types of projects, such as public works, in particular areas, even though defendants knew that was illegal.

(Lichtenfels Dep. Exh. 44, November 1964)

As McCulloch explained to his salesmen:

> You cannot put in a franchise that a certain account will stay off the other account's specifications, types of jobs etc. This is not legal. What you have to do is to say that this account can bid the following types of work only. This then should keep them off of the other accounts that you might have in the same area.
>
> (McCulloch Dep. Exh. 23, Nov. 1964

The franchise language was altered to comply with restraint of trade laws in some states, but the dealer was still assigned a primary area with instructions designed to "keep him within the boundaries." McCulloch wrote to a local Russwin salesman in 1962:

> Under Texas law, the account is free to quote anywhere in Texas except, however, that you can assign him a primary area which he will generally stay within so in effect you can still exercise what we do elsewhere in the country with the contract accounts.
>
> (McCulloch Dep. Exh. 27, Mar. 1962

Even without written franchises, Emhart maintained its sales policy against dealers bidding outside their own territory. In a memorandum to Wiley, McCulloch related the following conversation with a maverick dealer:

> I told Jack Dean that if he quoted this job and was low, we would not supply the material to him ... I said that ... we had a sales policy that we expected our dealers to maintain. He then replied that he didn't know of any sales policy like this.... He understood that it was a gentlemen's agreement but if the gentlemen didn't behave, and agree to the agreement, they could do as they wanted. Jack was just playing with words here because he is very familiar with our policy even though it is not in writing.

McCulloch advised Wiley:

> In straightening out these people, I would have it understood by both parties that they are not to bid in each other's city under any condition unless they have cleared it first with you or

or New Britain. This old story that the contractor in their area wasn't getting a bid from the hometown dealer doesn't go. I would rather not see a bid put in than to have this happen.

(McCulloch Dep. Exh. 4, Apr. 1959)

Sargent & Company

Internal corporate sales memoranda set forth Sargent's general sales policy regarding exclusive territories.

Sargent's "Manual of Policies" (December 1957) provided:

> The nature of contract distribution lends itself to exclusive franchises in well defined territorial areas. Along with the granting of exclusive franchises must go the obligation on the part of customers to purchase from Sargent & Company, and no one else, the full line of products manufactured by Sargent & Company. This refers to such items as Locks, Exit Bolts, Door Closers, Pull and Push Plates, and other Miscellaneous hardware of our manufacture.
>
> (Gray Dep. Exh. 7)

A sales bulletin from Eli Yale to all contract hardware salesmen and sales managers, June 5, 1962, stressed:

> Below is a general statement of Sargent & Company's policy as it pertains to franchise areas and masterkey protection. It would be good to go over this in general with each of your customers.
>
> The policy of Sargent & Company is to distribute architectural hardware products through exclusive franchised outlets in well defined territorial areas.... This exclusive franchise area is to be respected by Sargent distributors from other areas.
>
> (Healy Dep. Exh. 2)

In a letter to all salesmen, January 5, 1960, J. B. Duff stated:

> Sargent & Company's sales policy is built around giving an exclusive franchise to a distributor in an area. On so doing there is a reciprocal responsibility on the part of the distributor to give Sargent exclusive representation.
>
> (Salaman Dep. Exh. 3, Jan. 1960; Gray Dep. Exh. 25, Dec. 1959)

This policy was explained at NBHA and ASAHC conventions, and annual meetings of Sargent dealers.

(Salaman Dep. Exh. 2, May 1961;
Thompson Dep. Exh. 1, May 1968)

For example, H. R. Giese, the president of Sargent, explained to 160 dealers at a 1963 convention that: "Sargent & Company has been committed to the policy of the exclusive franchise. Our plans include the continuation of that policy."

(Yale Dep. Exhs. 31 and 32,
October 1963)

By written franchises, and on a verbal basis, Sargent allocated territories among its dealers upon the understanding that dealers would "not infringe on anyone else's territory."*/

(Rhynedance Dep. Exh. 4, Mar. 1966)

In form letter to its dealers, Sargent stressed the written franchise assigning an "area of exclusive sales" and incorporated policies "that we have tried to follow for years."

(NYC Yale Dep. Exh. 3, Aug. 1964)

These arrangements were worked out among dealers in adjacent territories.

(Rhynedance Dep. Exh. 1, Nov. 1967;
Rnynedance Dep. Exh. 5, May 1966;
Rhynedance Dep. Exh. 6, Oct. 1965;
Rhynedance Dep. Exh. 7, undated;
Rhynedance Dep. Exh. 8, Oct. 1967;
Salaman Dep. Exh. 6, March 1964;
Salaman Dep. Exhs. 7-8, Dec. 1964;
Thompson Dep. Exhs. 6-9,
October and November 1964;
Thompson Dep. Exh.10, June 1965)

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*/ In some instances, competition was so completely limited that jobs were lost "as a result of a misunderstanding as to which one of these accounts would bid where."

(Salaman Dep. Exh. 7, December 1964)

In metropolitan areas such as New York City, Sargent established several dealers, allocated masterkey jobs among dealers, and assigned dealers to particular types of work such as school construction.

(Gray Dep. Exh. 50, October 1964;
Gray Dep. Exh. 52, undated;
Gray Dep. Exh. 57, December 1963)

If dealers bid outside their area, Sargent refused to sell the contract hardware to them. In a letter of March 1, 1968, George Rhynedance returned an order to Dave Oaks, a Chicago area dealer "since this project is out of your marketing area."

(Oaks Dep. Exh. 4a, March 1968;
Oaks Dep. Exhs. 4b, 5-7, Feb. 1968)

Dealers were prevented from bidding outside their territory even when the protected dealer "has not been very successful or even willing to take [the work] at a price."

(Yale Dep. Exh. 30, January 1965)

For instance, upon complaint from its local dealer in San Antonio, Texas, Sargent secured agreement from Robinson Co., the Austin, Texas dealer to "keep the peace" by not bidding on private or public jobs in San Antonio.

(Yale Dep. Exhs. 28-29, Dec. 1964)

Even though Sargent recognized it was illegal to "restrict government business," Eli Yale instructed local salesmen to achieve this by getting a "definite understanding" between Sargent dealers.

(Yale Dep. Exh. 30, January 1965)

As Dave Oaks testified:

Q As a Sargent distributor were you restricted to jobs in your sales territory?

A Yes, I was.

Q On occasion did Sargent return orders which you submitted for jobs outside of your territory?

A Yes, they did.

Q Do you recall any specific instances?

A I recall an instance in Mason City, Iowa, that they returned. I had a customer in Mason City, Iowa, which took an order from a Sargent distributor in that area and Sargent would not honor my purchase order.

(Oaks Tr. 88-89)

Q Did Sargent & Company refuse to sell you the hardware for the project at the Lutheran Home for the Aged?

A Yes, they did.

Q Did you discuss this situation with Mr. Rhynedance at any subsequent time?

A Yes. The next time I saw Mr. Rhynedance I told him that the policy stunk, but he said, "That's our policy. Either abide by it or get out."

Q What was Mr. Rhynedance's position at this time, on March 1, 1968?

A He was the Midwestern District Sales Manager.

(Oaks Tr. 94)

Ilco Corporation

Ilco's "contract sales policy" with regard to assignment of territories provided:

> All Contract #6 accounts should have a clearly defined geographical area in which they are our protected sole distributor for Contract Items....
>
> Situations will arise where the job is in one accounts territory and the Architect in another accounts area. Such matters should be resolved by the Regional Sales Manager with primary consideration given to the location of the job. In some cases it can be arranged for the two accounts to work together. Location of the Contractor should not be considered in determining which account is entitled to the job.
>
> (Materne Dep. Exh. 3, undated)

A dealer was not allowed "to seek work outside his normal area unless approval has been cleared with the contract accounts in the area effected" through the regional sales managers.

(Materne Dep. Ex. 2, August 1961)

Earl Materne, western sales manager, advised Sam Crissman, vice-president of Ilco in 1961, that:

> [P]resent company policy of clearly defined geographical territories in which the Lockwood Contract Distributor is protected is excellent and beneficial to both the distributor and the company.
>
> (Materne Dep. Exh. 4, August 1961)

When he became general sales manager, Materne wrote to all salesmen:

> Lockwood contract Distributors are only franchised to sell in their own marketing areas. Any order(s) to be shipped, or drop shipped, outside of their franchised area must, in good conscience, be investigated by the territory salesman, and if necessary, the Regional Manager to make sure of its validity. Should there be the slightest question - it should be immediately referred to the National Sales Manager.
>
> (Wheatley Dep. Exh. 20, undated)

In 1964, Materne suggested that Ilco's contract hardware sales policy be changed to permit dealers to bid on government jobs outside their own territories.

(Wheatley Dep. Exh. 21, undated; Hicks Dep. Exh. 8, October 1964)

Wheatley rejected this idea because it would not be possible to "police such a policy."

(Wheatley Dep. Exh. 22, Oct. 1964)

Ilco worked out specific agreements among contract hardware dealers to allocate jobs in larger metropolitan regions, such as Los Angeles

(Materne Dep. Exh. 1, June 1959; Materne Dep. Exh. 10, Feb. 1966)

and New York. An agreement was made with Ilco's three contract dealers in the New York metropolitan area and Long Island whereby each dealer bid only certain types of projects, such as schools or public housing. Meetings were held "every three or four

months" to prevent competition.

(Wheatley Dep. Exh. 24, Dec. 1959; Materne Dep. Exhs. 5-8, June-Oct. 1966; Wright Dep. Exh. 32, August 1965)

Similar arrangements were made with regard to "New York State work."

(Wheatley Dep. Exh. 28, June 1966)

Eaton (Yale)

Yale assigned exclusive territories to its distributors, forbade them to bid outside their territory and protected them from infringement by other dealers.

(Talgo Dep. Exh. 31, October 1961)

(1) Southern California

In 1961, Yale's general sales manager, James D. Young, wrote his salesmen that "out of this office we lay down our sales policy," that Los Angeles Hardware Co. had been assigned the Los Angeles market, and that smaller accounts set up outside Los Angeles were not to "interfere with the activity of Los Angeles Hardware when working on contract hardware jobs in our Los Angeles city trading area."

(Hettling Dep. Exh. 23, March 1961)

Yale dealers were not permitted to bid on a contract hardware job unless they cleared the matter through the Yale salesman, who had a list of all "jobs being bid by the Los Angeles Hardware Company."

(Hettling Dep. Exh. 23, March 1961)

Los Angeles Hardware received a copy of these instructions with Young's assurances:

> ... if there has been any interference with your sales activity, the attached copy of letter certainly removes this stumbling block.

(Hettling Dep. Exh. 22, March 1961)

At the same time, Young warned his salesmen that "there are to be no deviations from our policies."

(Hettling Dep. Exh. 24, March 1961)

When Hoffman Hardware bid on the 186th Street School in Los Angeles, Young instructed his sales manager:

> ... to inform Hoffman Hardware that they are not permitted at any time to bid Los Angeles School Board work.
>
> (Talgo Dep. Exh. 23, October 1961)

Young took up the matter directly with Hoffman Hardware:

> It is necessary for us to support Los Angeles Hardware on School Board bids since they are our recognized contract builders' hardware outlet. Consequently, I hope you understand when I ask that you refrain from bidding on contract hardware work in the City of Los Angeles.
>
> (Talgo Dep. Exh. 24, October 1961)

When Hoffman Hardware subsequently bid on the Rowan Avenue School in Los Angeles, Young commanded his district sales manager:

> There are two direct violations in bidding on this job -- first, it is a Yale masterkey system -- second, it is a City of Los Angeles School.
>
> Please inform Bob Badham immediately that we will not recognize his order for the hardware for this school and that the hardware must be purchased from the Los Angeles Hardware Company.
>
> (Talgo Dep. Exh. 25, November 1961)

(2) Western States.

The still extant documents reveal that Yale set up dealers with exclusive territories and protected them from interference in Northern California,

(Talgo Dep. Exh. 9, March 1962; Talgo Dep. Exhs. 9-A and 9-B, January 1962)

Colorado,

(Talgo Dep. Exh. 36, March 1964)

and Texas-New Mexico.

(Talgo Dep. Exh. 37, July 1965)

Each dealer was assured that other accounts would not bid in its territory.

(3) Southern States.

In 1963, Capitol Hardware Company, Yale's Jackson, Mississippi account, wrote to Harry Talgo:

> We were pleased with your assurance that the Memphis firm [Conmat] would not be permitted to quote hardware in our State with the possible exception of some extremely northern counties of the State, and this only when Memphis architects and contractors were involved.
>
> (Talgo Dep. Exh. 21, Oct. 1963)

Two years later, Yale's vice-president, Leo Pantas, outlined for Capitol Hardware the territorial restraints Yale imposed on its Memphis account:

> Consequently, if a job is written in Yale specs in your area, there should be no interference from Conmat, since, as I said before, they are restricted to the City of Memphis in the sale of Yale goods.
>
> (Pantas Dep. Exh. 19, Jan. 1965)

Talgo conveyed similar territorial guarantees to Yale's Birmingham, Alabama account in 1963:

> Our assurances to you were that the Conmat Company would not bid Yale products in Alabama outside the general Huntsville market
>
> (Pantas Dep. Exh. 22, Nov. 1963)

C. Defendants allocated jobs and territories to maintain prices at non-competitive levels.

While conceding that dealers were restricted from bidding on existing masterkey systems or jobs outside their assigned territories, defendants have sought to explain these arrangements as necessary to ensure that their contract hardware dealers provided service to building owners.

(Wiley Tr. 211)

However, the documents written by defendants during the conspiracy belie the excuses they now advance for their restraints on competition. Defendants protected the original dealer on masterkey system extensions even though another dealer was located much nearer the job and previously serviced the job.

(E.g., Yale Dep. Exh. 38, September 1964;
Talgo Dep. Exh. 17, February 1963;
Pantas Dep. Exh. 13, May 1963)

For instance, Sargent refused to sell hardware to a Portsmouth, Ohio dealer for a job in that town to protect the St. Louis, Missouri dealer who helped write the specifications. The incident began with a complaint by Golterman & Sabo that it had written closed specifications for the Citizens Savings & Loan Ass'n."and thought for sure that we had a no competition job." However, G & S was underbid by Hibbs Hardware Co.

(Rhynedance Dep. Exh. 23-E, April 1965)

Gray, Sargent's regional sales manager, alerted the keying department and sales force to stop any order from Hibbs. Gray wrote:

> The purpose of this letter is to advise you that we will be on the lookout for this order should it come in direct from Hibbs Hardware, and furthermore, we would appreciate your alerting any of your distributors not to accept the order from Hibbs in the event that they do try to place it within the territory.
>
> (Rhynedance Dep. Exh. 23-C, April 1965)

Gray informed G & S that the order from Hibbs had been returned and that Sargent would prevent Hibbs from "bootlegging" the hardware.

(Rhynedance Dep. Exh. 23-B, April 1965)

G & S responded:

> Bob, thank you for your letter of 26 April 1965, and for your help in stopping Hibbs Hardware Company from purchasing the contract hardware for this job.
>
> The buyer on this project at Bank Buildings & Equipment Corporation is aware that Hibbs is having difficulty in purchasing the Sargent material and told us that if he forsees any difficulty as far as Hibbs delaying the job, that he will cancel the order with Hibbs and give it to us. The buyer however is irritated because he knows that "someone in St. Louis" is trying to put the screws to Hibbs in the purchasing of Sargent material. At this point we are just hiding and watching and trying to offend as few as possible.
>
> (Rhynedance Dep. Exh. 23-A, April 1965)

In another incident previously noted (p.82), Emhart sales officials acted to protect a Seattle, Washington, Corbin account from competition by a Russwin dealer in Alaska -- on a continuation of a masterkey system in Alaska. The Russwin dealer in Alaska had obtained the job even though he put on a "pretty hefty" mark-up of 50% over book cost, plus freight.

(Bauman Dep. Exhs. 32 and 33, August 1963;
O'Neill Dep. Exhs. 16 and 17, August 1963)

D. Defendants sought to protect the dealer who prepared the specifications for particular jobs.

The defendants also restrained competition on new work in order to protect the dealer who prepared the specifications.

(Gray Dep. Exhs. 19 and 22, October and July 1961;
Wheatley Dep. Exhs. 16-18, November 1965;
Wheatley Dep. Exh. 19, June 1966)

As Dave Oaks, salesman for Russwin and Sargent, explained:

Q Did Sargent have any policy with respect to distributors not bidding on jobs for which another distributor had prepared the specifications?

A The policy was that one distributor would honor the other distributor's specifications, or as a salesman, either a Russwin or Sargent salesman, if I wrote a specification, I usually would have one distributor, whom I so chose, put a bid on that job.

(Oaks Tr. 88)

VI. DEFENDANTS CONCEALED THEIR ANTITRUST VIOLATIONS BY SURREPTITIOUS CONDUCT AND MISREPRESENTATIONS TO PURCHASERS DURING THE CONSPIRATORIAL PERIOD AND CONTINUED THE SUPPRESSION OF THE FACTS DURING FEDERAL AND STATE INVESTIGATIONS

A. Defendants knew that their restrictions on competition were illegal and, accordingly, sought to conceal them.

As previously discussed, defendants were careful not to record their illegal arrangements in writing. Other examples of concealment include the following:

(1) When the local salesman for Corbin set up an agreement between dealers in Indiana that "they would not bid on each other's masterkeys," Parsons warned:

> In regard to your letter of October 22, I think it advisable that everything be kept on a verbal basis.
>
> (Bauman Dep. Exh. 77-B, November 1961)

(2) In a memorandum to "all midwestern salesmen," Rhynedance, Sargent sales manager, instructed "each of you to verbally request the cooperation of our distributor and locksmith accounts" to refuse an order that involved breaking a masterkey system.

(Rhynedance Dep. Exh. 21, November 1965)

(3) The regional sales managers for Ilco instructed dealers not to bid certain jobs, "using the excuse that they were too busy to handle it at the moment." */

(Materne Dep. Exh. 23, October 1966)

Moreover, defendants structured their agreements with dealers to achieve the illegal allocation of business, but avoid

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*/ Sometimes, even these precautions were not enough. As a salesman reported to Gray, he wanted to pull the line from a dealer but there was a problem because the dealer had made "a tape of our telephone conversation" when Sargent previously required the dealer to withdraw a bid on a job reserved for a competing distributor.

(Gray Dep. Exh. 20, July 1964)

express reference to the restraints imposed upon dealers. As McCulloch explained to O'Neill, then western sales manager:

> Referring specifically to C&S and your comments regarding them not bidding on public works, existing RUSSWIN keys, RUSSWIN specs. or, in general, specified work, in talking with Sherm Carpenter and Bill Lichtenfels, we think you are being entirely too restrictive here. We realize what you are trying to do but, again, we have got to be realistic. Certainly there should be no problem regarding existing RUSSWIN keys as this is clearly spelled out in the franchise in the standard terminology in that we will assign existing masterkeys to the RUSSWIN dealers and the other dealers will not be permitted to bid on them.
>
> Certainly any account, that has a full line and that cannot bid on public works, is dangerous from the legal end. Of course, when you get into the public works category today, how far does this go? We would assume that probably 80 or 90% of the schools in any state have public money on them. I think we have got to be more definitive in how we set up a diversified account than restrictive. Again, you could not tell a dealer, that has a full line, complete catalog and price book, that he could not bid on any RUSSWIN spec. in his area. This would be a restraint of trade and again in a dangerous area. Even worse is to tell him that he cannot bid on any specified work in general in his area which could mean to lawyers that there was an arrangement among all his competitors for him not to bid on their work.
>
> Now how can we be more definitive than restrictive with C & S, for example? We can limit them to the class of work. For example, you can say they can bid on all work except schools, hospitals, etc.
>
> (Lichtenfels Dep. Exh. 43-A and 43-B, December 1964)

In large metropolitan areas where the defendants had more than one dealer, they "parcelled out existing masterkeys" and restricted the dealers to those jobs rather than telling each dealer the masterkey systems assigned to other dealers. In this connection, McCulloch instructed Lichtenfels:

> Referring to the matter of existing masterkeys that are going to be parcelled out to the contract dealers in New York City, upon further thought regarding this matter, I don't think we should send

> the entire list to each dealer showing them what their portion is and what the other dealers' portions are for if this list got into the hands of possibly a federal authority, it would look to them as though we were setting up situations where dealers could name their own profit which would be a collusive arrangement and could get us in trouble.
>
> I think that each distributor can be assigned their own masterkeys and that is all they should know about. If there are any questions about any other keys other than on their list, they should contact the New York Office and you can advise them by telephone. I think you can see what I'm getting at. If a list was parcelled out, broken down three ways with a stipulation by us that they could bid only on these, it would mean to most anyone that each group were going to be protected by us and they could charge any kind of profit they want. This would be dynamite, don't you agree? (Emphasis added)
>
> (Lichtenfels Dep. Exh. 10, Aug. 1961)

It is obvious from this letter, though, that dealers were prohibited from bidding on any other Russwin dealer's masterkey system, i.e., those not on their assigned list.

Indeed the illegal allocation of territories, jobs and customers was implemented by a general manner of operation, understood by dealers and enforced by defendants, which was not put in written franchises. McCulloch wrote to O'Neill that Sherman Carpenter, assistant general counsel, had advised that Emhart could enforce its restriction against bidding on an existing masterkey job by refusing orders "for a number of good reaons." McCulloch added:

> Sherm also points out even though we might not have a written agreement with a distributor, our general matter of operating is the same now as it always has been and will be in the future whether we have a signed agreement or not. Everyone knows the ground rules and common law many times stands up in court. In other words, Russwin has not condoned the selling of its contract items to non-Russwin dealers, even though the contract items by nature may be on a dealer's shelves and in stock.
>
> (O'Neill Dep. Exh. 10, Sep. 1964)

B. Defendants arranged for "complimentary" bids to give the appearance of competition.

We have earlier set forth instances of collusive bidding arranged by defendants. As stressed by McCulloch, these collusive bids were designed to have the "owner and architect believe that they were getting competitive bids from two sources."

(McCulloch Dep. Exh. 38, March 1962)

When federal or state law required several competitive bids, defendants (through their highest sales executives) made certain that a requisite number of "complimentary" bids were submitted at prices higher than the "favored" dealer. If purchasers became suspicious at the absence of competitive bids on masterkey work, defendants instructed their sales representatives to have other dealers, besides the protected one, submit quotes to give the illusion of competition. Some examples follow:

(1) The Florida State Purchasing Commission complained to Emhart in 1964 about its failure to secure quotations on Russwin hardware after numerous requests.

(Wiley Dep. Exh. 27, December 1964)

Thereafter, McCulloch instructed the Russwin southern sales manager, salesmen, and the protected dealer in Tallahassee that other Russwin dealers should bid on replacement materials. McCulloch warned that the complete refusal of dealers to bid "is where the protection of the existing key system policy we have can get us in trouble unless our dealers are realistic."*/

(Wiley Dep. Exh. 28, December 1964)

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*/ Other evidence shows that Emhart had allocated territories, customers and jobs in Florida, as well as the other states, throughout the conspiratorial period.

(E.g., McCulloch Dep. Exhs. 16, 17 and 20 May 1959;
McCulloch Dep. Exh. 18, August 1959;
McCulloch Dep. Exh. 24, November 1956;
Wiley Dep. Exh. 14, January 1961;
Wiley Dep. Exh. 15 and 16, Feb. 1961;
Wiley Dep. Exh. 18, July 1964;
Wiley Dep. Exh. 19, April 1966;
Bauman Dep. Exhs. 12-A and 12-B, July and August 1963)

(2) The architect for the Bullock County Board of Education in Statesboro, Georgia complained that Russwin hardware "was not available to any hardware supplier other than a Russwin distributor." Southern sales manager, Glenn Wiley, stated, in response, that an authorized Russwin distributor is not "restricted in the sale of our products to other distributors of other manufacturers products nor is he restricted in selling direct to a school system or the representatives of the owners of other major type buildings."

(E-3453, June 1963)

Wiley's statement, of course, was a complete misrepresentation since Russwin prohibited their dealers from bootlegging contract hardware or bidding on extensions of masterkey systems.

(3) On a job for the Florida State Hospital in 1961, McCulloch and Wiley arranged for the local Russwin distributors to "cooperate" so that the State of Florida would not suspect "collusion and unfair bidding practices." By letter to W. S. Lee Company in Tallahassee, McCulloch reviewed a complaint that Baird Hardware had infringed upon Lee's masterkey system, and advised:

> In this case it's going to be quite difficult for us now, to refuse selling Baird Hardware these locks for this particular order, inasmuch as they are a bonafide Russwin distributor, and I am sure you will recognize the fact that the State of Florida doesn't recognize boundaries as far as distributorship of any product goes ... and we all might get ourselves into hot water if we force this issue on this order. The State might claim collusion and unfair bidding practices. I am sure that you don't want the finger pointed at you or Russwin.
>
> Another point is, Bill, that on State work it's pretty difficult for us, I feel, to stipulate that only one dealer in the State can bid on our products. The way it's done in most States ... the distributors work together and respect each others key systems.

> We have checked into the situation like this in the past with our lawyers and they say, legally, we cannot force a dealer to withdraw in his bid on Government or State Public work, when he's a bonafide Russwin dealer. I'm asking Glenn Wiley and Bill Fisher to see if they can't prevail upon Baird Hardware in this instance to buy the hardware from you, as I think this is the best way out of it, rather than have them withdraw their bid.
>
> (Wiley Dep. Exh, 15, February 1961)

A month later, Wiley reported to McCulloch:

> I believe that I have resolved the hassle between Baird Hdwe. and Lee over the above order. Bill Lee agrees that we can do nothing to involve our position with the state, and has agreed to have Baird go ahead with the order. I impressed on him in the future that we would help coordinate these problems.
>
> (Wiley Dep. Exh. 16, Feb. 1961)

(4) Carl Bauman, Corbin's general sales manger, recognized the need to conceal the unlawful protection of masterkey systems in an infringement situation involving the Unversity of Wisconsin. Bauman arranged to have the hardware sold through the protected distributor, rather than flatly refusing to sell to the infringing distributor, "due to the fact that if the University ever found out that there was no competition that might change their Master Key system."

(Bauman Dep. Exh. 71-A, June 1961)

C. Defendants falsely stated to building owners that there were no restrictions upon where or to whom contract hardware distributors could sell.

Defendants concealed their illegal practices from purchasers of their products. For example, when Murry Sell of New York was awarded the University of Maryland Medical Science Library job, Yale pursuant to its "usual policy" prevented Sell from securing Yale hardware through any "established contract hardware account" other than its Baltimore dealer, Anderson & Ireland. This "policy" forced Sell to buy from Anderson & Ireland -- at non-competitive prices -- not only the library job, but also Bancroft Hall at the Naval Academy.

Nonetheless, Yale wrote the Naval Academy that Yale accounts other than Anderson & Ireland were free to supply Sell:

> Murry Sell ardware Company, Inc., can request a quotation f om any authorized Yale Contract Hardware Distri utor in the United States and are not restricted n any sense of the word to securing Yale Grand Master Keyed locks and cylinders from the Anderson & Ireland Co. of Baltimore.
>
> * * *
>
> ... Murry Sell Hardware Co., Inc. is not in any way obligated to accept [Anderson & Ireland's] this quotation and can secure additional quotations for the same aterials from any Yale authorized Contract Hardware Distributor he may choose to select.
>
> (Talgo Dep. Exh. 67, August 1959)

D. When required by state law, co-conspirator distributors filed affidavits of non-collusion.

E. Continuation of concealment efforts during the federal civil actions and private treble cases.

The record reveals that the defendants have sought to suppress evidence and to fabricate a line of defense with the witnesses testifying under oath in these proceedings. On March 26, 1973, David Oaks testified as follows:

> Q Prior to this deposition have you had any conversations with any representatives of the defendants, that is, Russwin, Corbin, Yale, Sargent or Lockwood?
>
> A Yes.
>
> Q With whom?
>
> A With Mr. Fred Holfelder [sales manager] of Russwin.
>
> Q When did such conversation occur, or conversations?
>
> A After I received the supboena in the mail.
>
> Q Would you describe the circumstances leading up to your conversation with Mr. Holfelder....
>
> A Mr. Holfelder contacted me and indicated that Mr. Ed Cooney or Mr. Rick Reynolds [counsel for Emhart] may be calling me at my office to find out if I am going to be friend or foe....

Q What was your response to Mr. Holfelder?

A I told Mr. Holfelder, you know, that I was almost embarrassed by the question because I had no alternative but to tell the truth.

Q Did you state whether you were willing to talk to Mr. Reynolds or Mr. Cooney?

A Yes. I gave Mr. Holfelder my home phone number and indicated that they could contact me at home.

Q Did you have any subsequent conversation with Mr. Holfelder?

A Yes.... I indicated to Fred that I had not heard from Rick Reynolds or Ed Cooney and I was kind of worried about the deposition.

Q What did Mr. Holfelder state to you?

A He mentioned something to the effect that Mr. Reynolds was on vacation, or Mr. Cooney, I can't recall, and we just talked in general about the type of questions that might be asked, because apparently Mr. Holfelder had been deposed in a similar matter, or in this matter, I don't know.

Q What did Mr. Holfelder tell you with respect to the type of questions that would be asked?

A Well, he indicated that they would ask very specific questions, and unless I remembered specifically incidents or things that might have happened five or six or ten years ago, it is very difficult to remember those things.

I indicated to him that my memory is quite vivid of every instance that I have stated here.

Q Did Mr. Holfelder pose an example of the type of question you would be asked?

A Yes. He said the type of question they might ask of you would be, "Have you ever threatened to terminate a distributor for bootlegging or the breaking of a master key system?", and he also indicated in the same sentence, he says, "You know, both you and I know that we have never done that", and we both chuckled.

I indicated to Mr. Holfelder that he was talking to Dave Oaks, not some clown, that we have both done it and we both know it.

Q Did Mr. Holfelder ask whether any materials had been subpoenaed from you?

A Yes.

Q What was the substance of the conversation in that respect?

A Basically, the sequence of events was that I indicated to Mr. Holfelder that according to the subpoena, I was required to bring documents pertinent to master key systems and similar type documents, and Mr. Holfelder indicated that it might be to my best interest if I could lose some documents.

MR. BATES: May I have that answer again, please? I did not hear it.

BY THE WITNESS:

A He said that it might be to my best interest if I could get some documents lost in my files.

BY MR. FREEMAN:

Q Did Mr. Holfelder advise you that no one could really be expected to remember events that had occurred five or ten years ago?

A Yes.

* * *

Q Did you advise Mr. Holfelder that you intended to tell the truth at your deposition?

A Yes.

Q Were you subsequently contacted by either Mr. Reynolds or Mr. Cooney?

A No, sir.

(Oaks Tr. 114-118)

The entire pattern of responses in the depositions in these treble damage cases reflects a well-rehearsed party line to support a concocted defense that none of the companies had any general sales policies regarding masterkey systems and that territories, customers and jobs among distributors were not allocated.

Defense witnesses in the private treble damage cases have followed a pattern of evasion, denial and failure to recall. The first witness to be deposed, McCulloch, testified for two days denying any illegal conduct and suffering convenient failures of memory. When confronted with documents that exposed his answers as false, he claimed the privilege against self-incrimination to avoid any further questions.*/ The next three witnesses -- George

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*/ Prior to the federal investigation, defendants were sued by distributors who had been terminated for violation of their illegal sales policies. In one of the cases, Gardner Hardware Co. v. Emhart Corp., 4-66 Civ. 63 (D. Minn.), several employees falsely denied that Emhart had sought to enforce its restrictive sales policies or even that such sales policies existed. McCulloch was among the witnesses who gave such self-serving testimony.

Rhynedance, Earl Materne and Carl Bauman -- steadfastly denied the facts in the records. When asked about the documents, the witnesses failed to remember anything about them or ever having seen them. One witness, George Rhynedance, even refused to identify his own handwriting, despite the identical nature of a handwriting sample he gave at his deposition and the unique character of his left-handed writing.

Respectfully submitted,

LEE A. FREEMAN, JR.
Liaison Counsel for Plaintiffs

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One IBM Plaza, Suite 3200
Chicago, Illinois 60611
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DATED: December 6, 1974

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. $%

DESIGNATION OF WITNESSES AND DEPOSITION TESTIMONY

Upon a trial of liability issues, plaintiffs intend to call the following witnesses:

Richard Cure (Distributor for Ilco)
Alfred E. Gray (Sargent)
William J. Healy (Sargent)
Thomas B. O'Neill (Russwin and Eaton)
George E. Wheatley (Ilco)
Glenn E. Wiley (Russwin)
Elihu A. Yale (Sargent)

Plaintiffs intend to introduce the deposition testimony of the following witnesses:

Carl S. Bauman (Corbin)
L. Curtis Booth (Corbin)
Richard H. Foley
William C. Hettling (Eaton)
Robert N. Hicks, Jr. (Ilco)
Edward H. McCulloch (Russwin)
David R. Oaks (Russwin and Sargent)

Louis F. Quedenfeld (Eaton)

Roy G. Salaman (Sargent)

Sumner M. Sollitt

Harry G. Talgo (Eaton)

Richard W. Thompson (Sargent)

Robert H. Witt (Distributor for Russwin)

Myron Philip Falk (Ilco)

(Deposition taken in Cure & Company v. American Hardware Corp., No. 63-545 (S.D. Cal.))

In addition, plaintiffs intend to examine several additional witnesses by deposition prior to trial, including:

Louis Carr

Fred Hollfelder

Thomas Morris

Plaintiffs reserve the right to supplement and amend the foregoing lists of witnesses.

LEE A. FREEMAN, JR.

APPENDIX

IDENTIFICATION OF PERSONS MENTIONED IN SUMMARY OF EVIDENCE AND THEIR POSITIONS WITH DEFENDANTS DURING THE CONSPIRACY

EMHART CORPORATION (CORBIN & RUSSWIN)

Edward H. McCulloch	Russwin General Sales Manager; Russwin Vice-President - Sales
William J. Ziegenhein	Russwin Executive Vice-President
L. Curtis Booth	Corbin Vice-President
Carl Bauman	Corbin General Sales Manager
Thomas B. O'Neill	Russwin General Sales Manager; Russwin Vice-President - Sales
Geddes Parsons	Corbin General Sales Manager
Glenn Wiley	Russwin Southern Sales Manager
William C. Lichtenfels	Russwin General Sales Manager; Group Vice-President of Emhart
William Maher	Russwin Chicago Area Manager
Gene Deady	Russwin Midwest Sales Manager
Stu Force	Russwin Administrative Assistant
Dave Oaks	Salesman
Sherman Carpenter	Assistant General Counsel of Emhart
T. M. Ford	Legal Counsel of Emhart

ILCO CORPORATION

Sam Crissman	Vice-President - Sales
Earl Materne	National Sales Manager
George Wheatley	Contract Hardware Product Manager
Morris Falk	Salesman
George Newmier	Salesman

SARGENT & COMPANY

Herman P. Giese	President
J. B. (Bryer) Duff	Vice-President
Eli A. Yale	General Sales Manager; Vice-President - Sales
George H. Rhynedance	Midwestern Sales Manager
Roy G. Salaman	Western Sales Manager
A. G. Gray, Jr.	Eastern Sales Manager
R. W. Thompson	Southern Sales Manager
William Healy	Chicago Sales Manager
Sid McMaster	Head of Keying Department
Dave Oaks	Salesman

EATON CORPORATION (YALE & TOWNE)

Leo Pantas	Vice-President
Lou Quedenfeld	Regional Sales Manager
Harry Talgo	Regional Sales Manager for Yale; Marketing Manager for Contract Hardware: and Assistant General Sales Manager
William C. Hettling	Assistant General Sales Manager; Marketing Manager of Contract Hardware
James D. Young	General Sales Manager
Chuck Moody	Yale's Order Department
Bill McGreevy	Regional Sales Manager
Ken Lanyon	Regional Sales Manager
Hal Fallows	Yale Salesman
Fred Dunning	Salesman

EMHART CORPORATION (CORBIN & RUSSWIN)

W. C. Bierds	Emhart Price Supervisor
James Parker	Sales Representative
Whyte	Russwin Sales Manager

ILCO CORPORATION

John Meyer	Sales Representative

SARGENT & COMPANY

J. C. Elmblad	Salesman
Bert Schmidt	Salesman
James Stephens	Baltimore Salesman
Forbes Sargent	Salesman
Dave Winn	Salesman

EATON CORPORATION (YALE & TOWNE)

Walter Allen	President
Davenport Cleveland	Yale's Northeast Regional Sales Manager
Tom Dickensen	Yale's Baltimore Salesman
J. E. McGee	Yale's Supervisor of Contract Hardware
Thomas P. Pompa	Yale's Contract Service Supervisor
Puhek	Salesman
Bill Snyder	Yale Employee (reporting directly to Talgo)
John Tooher	Salesman
Tom Wemyss	Salesman
Bill Wolfe	Salesman
Les Groves	Yale Employee

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The undersigned hereby certifies that he caused the foregoing PLAINTIFFS' DESIGNATION OF EVIDENCE WITH RESPECT TO TRIAL OF LIABILITY ISSUES to be served upon all counsel by mailing a copy of the same to each of them, this 6th day of December, 1974.

LEE A. FREEMAN, JR.

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45 ALL CASES

SEPARATE CLASS ACTION AND TRIAL PROPOSAL OF DEFENDANTS EATON CORPORATION AND ILCO CORPORATION

For the reasons hereinafter stated, defendants Eaton Corporation and Ilco Corporation submit the following class action and trial proposal:

(1) That the Court disallow all nationwide class actions for the reasons set forth in Defendants' Memorandum in Support of their Motion for Denial of Class Certification, which Eaton and Ilco specifically join in and adopt;

(2) That the Court disallow all statewide class actions as to the issue of the alleged conspiracy among the defendant manufacturers to impose vertical restrictions on their distributors, in accordance with Rule 23(c)(4)(A) and for reasons hereinafter set forth;

(3) That the Court certify the fourteen statewide class actions on the sole issue of the alleged horizontal conspiracy among defendant manufacturers to fix book prices, in accordance with Rule 23(c)(4)(A) and for the reasons hereinafter set forth;

(4) That the Court conduct a single trial of all issues - violation, impact and damage - relating to the alleged horizontal conspiracy among defendants to fix manufacturers' book prices.

Discussion

Counsel have been charged by the Court with the responsibility of devising a workable method for trial of these cases before a jury which will fully and finally determine the issues in a manner which is not only fair to both sides, but also manageable by the Court and comprehensible by a jury. Plaintiffs have submitted a trial proposal which completely ignores the legal distinctions between the causes of action they have alleged and overlooks fundamental elements of the proof of these causes of action. The present trial proposal is an attempt to meet the needs of the Court and of the jury while at the same time respecting the substantive legal requirements of the antitrust laws. In making this proposal, defendants Ilco Corporation and Eaton Corporation join defendants Sargent & Company and Emhart Corporation in vigorously opposing plaintiffs' motion for separatio of the so-called "liability" and "damage" issues, and adopt defendants' joint memorandum in opposition thereto.

Plaintiffs have alleged two separate and distinct horizontal conspiracies, each requiring different quanta and kinds of proof as to both the liability and damage issues. They have alleged, first, a horizontal conspiracy among defendant manufacturers to fix manufacturers' list prices and, second, a horizontal conspiracy among defendant manufacturers and multiple conspiracies among defendant manufacturers and their respective distributors to impose vertical restrictions on their distributors.

It is apparent from their Summary of Evidence that plaintiffs believe that the horizontal price-fixing conspiracy among defendant manufacturers presents a case which is capable of being defined, isolated, tried and determined to a conclusion, including assessment of damages in a precise amount. It is equally clear

that the gravamen of this alleged conspiracy was the fixing only of the prices at which all manufacturers sold to the distributors, that is, the manufacturers' book price. On the other hand, the separate, distinct multiple conspiracies between and among all the manufacturers and all the distributors would have the result of affecting and infecting the distributors' prices and would have no effect on the manufacturers' book prices.

The evidence required to prove the first kind of conspiracy is entirely different from the evidence required to prove the second, not only as to whether there were technical violations of the antitrust laws but particularly with respect to the proof of the impact of any such violations on the plaintiffs. Only as to the alleged horizontal price-fixing conspiracy are there issues of law and fact common to all plaintiffs which could be resolved on a manageable basis in a single trial. The same evidence to establish a price-fixing conspiracy would be offered whether the plaintiff was the State of California or the State of Connecticut.

On the other hand, proof of vertical restrictions in Connecticut would be entirely different from proof of vertical restrictions in California. Similarly, proof of the impact of such vertical restrictions, in contrast to proof of the impact of prices raised and fixed by operation of a horizontal book price conspiracy, necessitates transaction by transaction analysis, which will vary according to the purchasing and marketing practices of purchasers on each level of the chain of distribution as well as the facts and circumstances of each bidding situation. Defendants' Memorandum in Opposition to Plaintiffs' Rule 42 Motion demonstrates not only that plaintiffs must prove the impact of the antitrust violation but that, in the context of vertical restrictions, that impact must be proved on a transaction by transaction basis and that there can be no uniform impact of such a conspiracy.

Plaintiffs' memorandum admits the extremely complex marketing relationships between each of the defendants and its distributors, as well as the peculiar relationships between the plaintiffs and contractors who erected buildings for them. In spite of these acknowledgements of highly complicated inter-relationships, plaintiffs state simplistically not only that the issues are capable of separation into liability and damages but that "if plaintiffs establish the horizontal agreement ... to fix prices and eliminate competition on master key jobs, the computation and assessment of damages would not require examination of each vertical arrangement by which defendants implemented their conspiracy." (Plaintiffs' Suggestions Regarding Procedures for Trial, page 9). On the contrary, as defendants have pointed out in their Memorandum in Opposition to Plaintiffs' Rule 42 Motion, examination of each vertical arrangement, and each individual transaction, is necessary to establish not only damages but also liability.

It is this substantive requirement of proving the individual impact of vertical restrictions, with the inevitable proliferation of proof of transaction after transaction, that renders the trial of these cases according to the plaintiffs' trial proposal impractical if not impossible and requires the parties to find an alternative means to permit the trial of these cases in an orderly, manageable fashion which will allow proper presentation of the claims and defenses which can be understood and dealt with by the jury and the Court. Indeed, defendants contend that the so-called vertical conspiracy cases do not admit of manageable trial on a class action basis and for that reason should be dismissed.

Defendants have pointed out that the questions of impact in a horizontal price fix case are totally different from those in a complex horizontal and vertical case and that the need for transactional analysis of impact is not present in the former case. (Defendants' Memorandum in Opposition to Plaintiffs' Rule 42 Motion, pp. 29-30). Conversely, defendants have also pointed out the legal requirement of such analysis in a vertical conspiracy and indicated the nature of the analysis which would be required in this case. (Defendants' Memorandum in Opposition to Plaintiffs' Rule 42 Motion, pp. 9-28). Defendants Eaton and Ilco submit that the requirement of such extensive and detailed analyses renders the trial of the vertical conspiracy allegations in these cases totally unmanageable on a statewide class action basis for the same reasons set forth by defendants in their opposition to national class certification. (Defendants' Memorandum in Support of Their Motion for Denial of Class Certification, pp. 10-24).

Indeed, this Court itself recognized that "insuperable problems of class action management might make pretrial dismissal of certain claims appropriate (citation omitted)." (Ruling on Motion for Summary Judgment, August 23, 1973, p. 6, n. 6). Even more recently the Court acknowledged that "it would be too difficult to manage if you have to take each particular job and figure out what the damages are in each particular job, at each particular time." (Hearing on Defendants' Motion Pursuant to Rule 37(a), September 30, 1974, p. 32). Because this is exactly what would be required to establish liability and damage arising from agreements to impose vertical restrictions, these issues simply cannot be managed on a class action basis and should be dismissed. Trial of these

myriads of claims would lead inevitably to distortion of the issues, uncorrectable confusion of the jury and completely unjustifiable usurpation of the time of the Court.

For these reasons, defendants Ilco and Eaton submit that separation and trial of the horizontal book price-fixing conspiracy is the only viable method of accomplishing the expeditious and orderly disposition of this litigation in a manner which will avoid unfair prejudice to defendants and will assure substantial justice.

SUMMARY

In summary, then, the trial proposal of defendants Ilco and Eaton is that the Court and the jury hear and determine all of the evidence offered to prove the existence of a "contract, combination or conspiracy" fixing the price at which the manufacturers sold their hardware to their distributors. In the same trial, the Court and jury would hear and determine any evidence offered by plaintiffs to prove the impact, if any, of such a horizontal book price conspiracy on the amount paid by any plaintiff for any hospital, school, college, or other public building, which of necessity would include a determination of the issues of "pass-on" and fraudulent concealment. Finally, the Court and jury would hear and determine the exact amount of damage, if any, sustained by any plaintiff on account of any such hospital, school, college or other public building.

Respectfully submitted,

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A copy of the foregoing Separate Class Action and Trial Proposal of Defendants Eaton Corporation and Ilco Corporation was mailed this day of , 1975, to counsel on the attached Service List of Counsel.

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(10)

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MASTER KEY ANTITRUST LITIGATION	MDL # 45
STATE OF NEW JERSEY	
vs.	CIVIL 15,664
EMHART CORPORATION, Et Al	

JANUARY 27, 1975
HARTFORD, CONNECTICUT

B E F O R E:
HON. M. JOSEPH BLUMENFELD, U.S.D.J.

MDL # 45 DEFENDANTS' MOTION FOR DENIAL OF CLASS CERTIFICATION

MOTION TO SEPARATE LIABILITY AND DAMAGE ISSUES

15,664 MOTION TO RECONSIDER ORDER DENYING NEW JERSEY LEAVE TO FILE SECOND AMENDED COMPLAINT and TO REHEAR NEW JERSEY UPON ORAL ARGUMENT

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MR. FREEMAN: Which motion would you like to hear first, your Honor?

MR. DIXON: I would like to proceed with an argument on both motions at the same time, if your Honor please.

THE COURT: There is also an added starter here. The State of New Jersey has a motion.

MR. CALMANN: Yes, your Honor, a motion for reconsideration of the motion to amend our complaint.

THE COURT: Let's wear these other fellows down first.

MR. CALMANN: Fine, your Honor.

MR. FREEMAN: Your Honor, before we proceed, there are some new faces.

Mr. Chester Horn and Mr. Bill Abbey representing the State of California are here from the Attorney General's Office in California.

And Mr. John Meyer from the State of Illinois

THE COURT: Good morning, gentlemen.

MR. FREEMAN: Also Mr. Landi from New York is here, Mr. Wiseman from Ohio, Mr. Calmann from New Jersey, as well as Mr. Montague and myself.

THE COURT: I can't even keep up with the new lawyers.

MR. DIXON: We have the same group here this

morning.

THE COURT: No added starters on your side.

MR. DIXON: I propose to direct my argument to our motion for a denial of a national class certification and also to the motion that has been made for a bifurcation of the trial into one of liability and damages.

THE COURT: These kind of overlap, do they?

MR. DIXON: They overlap. And I think that I can do it in a single argument, without consuming too much time.

THE COURT: Without adding more confusion.

MR. DIXON: I don't intend to add any confusion this morning.

THE COURT: All right. Well, I'll give you a fair shot.

MR. DIXON: Now the matters that your Honor is called upon to resolve today seem to me to be about the most important ones that have been decided in the case to date. So I have specifically asked, and each of defendant's counsel has requested, an opportunity to argue - not just the points I am arguing to the Court, but they will add by references to recent litigation the principal arguments that I am making today.

The central question, as I see it, before the Court is what trial procedure should be adopted which will most expeditiously dispose of this series of complex lawsuits.

I am convinced in my own mind that the plaintiff's proposal for a separate trial of all cases on a national basis on the issue of liability will not only result in a totally unmanageable trial, but in my opinion will also delay the ultimate resolution of these cases. And for the same reasons we say that we oppose the certification of a national class of private and public entities and say that Rule 23 simply does not permit, in this type of a case, such a certification.

It seems to me that the proposal that they make for separate trials ignores the necessity for proving the impact or fact of damage as part of liability. And I make this point, elemental as it may seem, because I think it's the basis, the real basis for the position we take here. The plaintiffs must establish a violation of the statute, impact of the violation on the claimant's business or property, and damages.

And if I may be permitted to quote a Judge that seems to be favored by Mr. Freeman, Judge Decker

from Chicago, may I use his language in a recent case decided as recently as September 24th, '74, in a suit by a dealer or distributor of Sargent against Sargent & Company alleging the same conspiracies that are alleged by the plaintiffs in this case - a case in which Judge Decker found for the defendant.

He said that, "... in an action for treble damages under Section 4 of the Clayton Act a plaintiff must establish the following elements of his case:

(1) that the defendant has violated the antitrust laws, that plaintiff has suffered an injury to his business or property susceptible of being described with some degree of certainty in terms of money damages, and that a causal connection exists between the defendant's wrongdoing and the plaintiff's loss".

Simple law.

"Of course", he continues, "... a failure by the plaintiffs to prove any one of the three elements of their case would require a trial judge to direct a verdict for the defendants".

Now, my position is --

THE COURT: Can I inquire here?

MR. DIXON: Surely. Excuse me.

THE COURT: This is a suit by a dealer against

his distributor, right?

MR. DIXON: You mean in the case that I'm quoting from. This was a suit by a distributor against the manufacturer, Sargent & Company.

THE COURT: Right.

Now, I don't know what the facts of the case are and I don't know what the language refers to. But if you're talking about cause in terms of the statute, you're generally talking about a target of the conspiracy.

Of course, a distributor working under, we'll say, a limitation imposed by a distributor vertically with respect to his territory, he's not technically a target of the conspiracy and would have to show damage in some other way; that is, that he lost business. But he's, I suppose, not a target of a price-fixing conspiracy because he's not a purchaser.

So I don't know. I mean you cull out certain language from an opinion of Judge Decker and without the factual picture I can't apply it here, because we don't have distributors suing their manufacturers.

MR. DIXON: May I point out to your Honor that the distributor was a purchaser from Sargent & Company, a direct purchaser, in complete contrast to

the plaintiffs in these cases, all of whom are indirect purchasers.

The proposition that he states is one that is fundamental to any trial on the question of liability.

THE COURT: He's not a purchaser consumer.

Anyway, I don't want to interrupt you any further on this case, except to indicate that there may well be a distinction when I see the facts of Judge Decker's case.

Is this reported somewhere?

MR. DIXON: Yes. And not only that, a copy of it was attached to our memorandum and sent to your Honor. So that it is before the Court.

THE COURT: All right.

MR. DIXON: Now it seems to me that we've got to understand, first of all, just what violations are alleged by the plaintiffs in their complaint, and we've got to recognize that they are numerous.

They allege first - and this, of course, was never a part of the Government actions against the individuals - a horizontal price fix. This can be proven through evidence that prices to distributors were higher as a result of the alleged national conspiracy and distributors passed on the increases

to contractors and contractors ultimately to the present plaintiffs.

Now let me say right off the bat that if this were the extent to which the plaintiffs make charges in this case, in other words if this were merely a price fix case only, I will immediately concede that there is authority for splitting such a trial into one of liability and one of damages. The authorities for that are the authorities that are cited by the plaintiffs in their briefs.

There is no authority cited, nor has there ever been a trial to the knowledge of any of the defendants where there has been a split - and there have been not only allegations of a price fix, but horizontal conspiracies to maintain vertical positions and vertical conspiracies. And that's what we have here.

THE COURT: That's what we have here.

Do we have the allegations of vertical conspiracies, --

MR. DIXON: Yes, your Honor.

THE COURT: -- which is offered as circumstantial evidence to support the existence of the horizontal conspiracy?

Well, just a minute. I'm trying to find out

now, if you don't mind, so it may save a lot of argument here.

MR. FREEMAN: Yes, your Honor.

THE COURT: You have that. Is that right, Mr. Freeman?

MR. FREEMAN: Yes.

THE COURT: Now, do you make a claim or a contention, in addition, that even if there was no horizontal conspiracy there were these separate vertical conspiracies on the part of each of these defendants?

MR. FREEMAN: Well, I think the separate vertical conspiracies are conceded.

The crux of our complaint is that those vertical conspiracies were part and parcel of the overriding horizontal conspiracy.

THE COURT: Well, whether conceded or not, you don't make a claim based on a separate ground of violation by reason of a vertical conspiracy?

MR. FREEMAN: No.

THE COURT: So I mean this is not exactly --

MR. DIXON: Now, do I understand the statement has been made to this Court that there is no charge of a vertical conspiracy by the plaintiffs?

THE COURT: No, no.

MR. FREEMAN: No.

THE COURT: Let me state it.

As I understand it, the showing of a series of vertical conspiracies here is in support of the claim that there was a horizontal price-fixing conspiracy and the vertical conspiracy merely was a way of implementing and strengthening the horizontal conspiracy.

Am I correct?

MR. FREEMAN: Yes, your Honor.

And may I add that in the summary of evidence, because there are so many separate vertical conspiracies, we have necessarily limited our proof to ones that we feel will demonstrate the pervasive nature and the horizontal nature of this.

There are another hundred of separate vertical arrangements that we do not intend to present as part of our proof at trial. We just don't want to go into it.

THE COURT: So analytically the vertical conspiracies are not alleged as separate causes of action. They are alleged merely as evidence that this is what was done to strengthen or support or in aid of a horizontal price-fixing conspiracy.

MR. DIXON: That's not the way the complaints

read, if your Honor please.

THE COURT: Well, it may not be.

MR. DIXON: It certainly isn't.

THE COURT: We have not sat down at an intimate pre-trial conference to really specify with particularity the issue here.

But as I read the brief, Mr. Freeman did not concede in so many words what he has just done in response to my inquiry. Although it is suggested in his brief that that's the only purpose of showing vertical restraints here is to show that this was one of the ways in which they strengthened their agreement.

MR. DIXON: To fix prices?

THE COURT: To fix prices on a horizontal basis, yes.

MR. DIXON: Then do I understand that the claim --

Well, let me read to your Honor the language in Mr. Freeman's brief. And he summarizes the allegations here.

THE COURT: What page?

MR. DIXON: I don't have the page, but let me read the way I have taken it from his brief.

"The defendants conspired to prohibit their

dealers from selling contract hardware for use in a building having another manufacturer's master key system".

This is a second claim of a different horizontal conspiracy.

THE COURT: It could be. But he is not using it as a basis for a cause of action. He is using it to show this is one way in which you enforce your horizontal agreement to fix prices.

MR. FREEMAN: And let me state it simply for Mr. Dixon.

There was a conspiracy among the manufacturer not to compete against one another on master key jobs. The only way this conspiracy could be enforced was through their dealers. They had to prevent their own dealers from bidding against another manufacturer's job.

Therefore, enforcement of the horizontal conspiracy involved numerous vertical restraints; refusals to deals, threats of incrimination, and all those other factors.

THE COURT: So there is no issue here of damages flowing strictly or solely from a vertical conspiracy.

MR. DIXON: All right. Now let me get this

straight.

Is the claim now that the only claim of damages in this case is the damages that flow from the price fix alleged conspiracy on the part of the defendants?

MR. FREEMAN: No.

The purpose of eliminating competition on the master key jobs and the purpose of allocating territories and preventing this competition on jobs was to keep the price up.

If the summary of evidence shows anything, it shows that the whole purpose of the restraint on competition was to maintain a high price level. It was not an academic exercise. There was no legitimate purpose for this elimination of competition.

This is something in addition to what is a classic price-fixing conspiracy arranged by people in a room.

MR. DIXON: I repeat the question:

Are the damages that are claimed in this case to be measured by the price at which the manufacturers are alleged to have increased the price at the manufacturer's level?

MR. FREEMAN: No.

MR. DIXON: Because certainly that has not

been the purport of what has been going on thus far.

MR. FREEMAN: No.

Your Honor, the damages arise from the fact that when competition was eliminated between these manufacturers on these jobs and eliminated among the distributors, the manufacturers no longer had to give price concessions to the distributors, which went from ten percent to twenty percent on competitive work, and the distributors were thereupon free to put larger non-competitive markups on these jobs.

THE COURT: Let me ask another question here, just so we get this clear and we don't knock ourselves out dealing with hypotheticals that are not going to have any significance in the final analysis.

I take it, Mr. Freeman, that your allegation with respect to vertical conspiracies is more or less -- well, is simply to overcome the existence of a separate transaction of a sale from a manufacturer to a distributor.

You are treating these distributors, in effect, as if they were controlled agents of the manufacturers.

MR. FREEMAN: Yes.

But I am treating them in the way that the defendants' conspiracy arranged things.

There was a conspiracy to protect master key jobs in a certain area - let's say Illinois. Now, to keep that conspiracy in operation a Russwin dealer would not bid on a Sargent job. But also Russwin dealers in Indiana and Iowa had to be kept out of Illinois so that they would not disrupt the protection.

THE COURT: I understand. I think I understand what you say your theory is.

But in order that Mr. Dixon doesn't tilt at windmills here which exist on the landscape, your case would be no different if all of these distributors were actually salaried agents of the manufacturer who were under control by reason of being employees, is that right?

MR. FREEMAN: Well, not exactly, because there were separate illegal acts, separate illegal restraints by the defendants on the distributors.

THE COURT: I understand.

MR. FREEMAN: So if they were salaried agents those acts would not be illegal; those acts demonstrate and support the horizontal conspiracy.

THE COURT: Yes.

But so far as it shows an illegal restraint upon a distributor, right?

MR. FREEMAN: Yes.

THE COURT: It would be also illegal if that restraint were placed upon their own agents, considering the illegality to be only the price fixing on the horizontal level.

MR. FREEMAN: That's not the sole illegality, though.

THE COURT: I understand that.

But the other illegality is not the basis of a cause of action; it's just a basis of showing how far they would go in order to enforce their horizontal conspiracy.

MR. FREEMAN: No.

The conspiracy consists of three aspects. The conspiracy does go beyond horizontal price fixing. The conspiracy is also the horizontal agreement to eliminate competition on master key jobs, which had the result of raising the price to a non-competitive level.

THE COURT: All right.

But you're not suing for damages because a particular distributor would have been able to sell a a lower price if he could compete in a broader area?

MR. FREEMAN: No.

THE COURT: You're suing because the price

was fixed at the top.

MR. FREEMAN: Well, the conspiracy operated to inflate the price at both levels. The conspiracy operated to inflate the price at the manufacturer's level and the distributor's level.

THE COURT: And maintained at that level through the power exercised illegally from the top.

MR. FREEMAN: I think the way to look at it is that if this case were consolidated and all plaintiffs went to trial, they would all rely on the same proof of violation and impact. There would not be a separate proof of individual cases for each plaintiff.

THE COURT: All right.

MR. DIXON: This has not --

THE COURT: I am going to hold him to what he said to me in the earlier part of this record.

MR. FREEMAN: Well, I hope I've made it clear, your Honor, that --

THE COURT: I think it's pretty clear.

I mean I quite agree, if we had just a number of separate horizontal conspiracies and that was all we were talking about we would have a far different problem here so far as management of the case is concerned in a single trial. Wouldn't we?

MR. FREEMAN: I think it's set forth in the summary of evidence.

And just so I'm accurate, we allege that there was a conspiracy to fix and stabilize prices which was implemented through periodic meetings among the defendants. We have evidence of those meetings.

There was also a horizontal conspiracy industry-wide, enforced through the trade associations, agreed upon the defendants to eliminate competition on protected master key work, on master key extensions.

THE COURT: And the enforcement of that was in a method which was, in itself, illegal?

MR. FREEMAN: Yes.

Restrictions on the right of dealers to compete.

THE COURT: Yes. But the damages flow from this conduct at the top.

MR. FREEMAN: And then further to enforce this agreement there was a limitation of the areas in which the dealers could operate and a prohibition against what they called bootlegging, which was trans-shipping hardware from place to place, or from Russwin dealer to Sargent dealer, so as to prevent

interference with the restraints on competition.

THE COURT: All right.

The thing is you mesh it all into one.

MR. FREEMAN: Yes.

THE COURT: One legal contention is that there was an illegal price-fixing conspiracy and that was manifested through these many things that they did, some of which were illegal.

MR. FREEMAN: I don't like to limit it to price -- It was a price fixing and conspiracy to eliminate competition, eliminate --

THE COURT: Well, that was to enforce their price fixing, as I understand your theory.

You don't like to limit it, but --

MR. FREEMAN: Well, it wasn't to enforce a specific price fix. It was to enforce the desire to stabilize prices at a higher level than would have prevailed under competition.

THE COURT: All right.

MR. DIXON: As I interpret the remarks he has made and the brief that he has filed it is that, one, there was a price fix conspiracy amongst the defendants at the manufacturer's level;

two, there was another horizontal conspiracy to prohibit dealers from selling contract hardware

for use in a building having another manufacturer's master key system - that's a second;

and that they conspired to maintain, and also these vertical restrictions are restricting territories, customers and jobs.

And I don't understand at this point whether we're talking about damages at the manufacturer's level or whether we're talking about the damages at the distributor's level, where they sold to what ultimately became the plaintiffs in this case.

And if we have both of them we have two conspiracies and we have two sets of problems - the effect of the first conspiracy, the effect of the second, and the effect of those vertical conspiracies. This is the only way I can interpret his brief.

THE COURT: I think it's possible, Mr. Dixon, to analyze it the way you have done, which would be, in effect, to say that these distributors - and I don't know about Judge Decker's case for the moment - but these individual distributors, by reason of the restrictions imposed upon them, lost money because they were restrained from competing. That they were damaged - not only because they were -- yes, because they were restrained from competing.

As I understand Mr. Freeman, that restraint

upon them from competing was just one of the devices which permitted the maintenance of a high price level.

Now whether that damaged the distributor is beside the point. The question is, as I understand his theory, to what extent did the ultimate user or the purchaser, was he required to pay a higher price because of this whole system.

Am I right, Mr. Freeman?

MR. FREEMAN: Yes, your Honor.

THE COURT: And you are looking for damages sustained only by these ultimate users?

MR. FREEMAN: And, as a matter of fact, we contend the restraints enabled the distributors to get a higher price so that the distinction --

THE COURT: Well, the distributors got a bigger profit, and also the manufacturer. Whether he gave the benefit to the distributor or not, you don't care.

MR. FREEMAN: No.

THE COURT: The only point you are concerned with is did the ultimate consumer have to pay a higher price by reason of all this system that they adopted. Is that correct?

MR. FREEMAN: Yes, your Honor.

THE COURT: All right.

So that from the standpoint of who suffered what damages, we are not looking to damages that may have been sustained by any distributor and we are not looking to the damages that a particular user may have sustained on the assumption that his distributor had a good price from his manufacturer.

We are looking only through this whole system that it got down, controlled all the way down the chain of distribution from these manufacturers. The ultimate consumer paid a higher price because these were maintained at higher prices.

Now whether those profits they gave to their distributors or whether they gave them to their stockholders or their sales managers or how is beside the point as far as the case is concerned.

So I understand the theory and we can set it out specifically, I think, so as to restrict it to that. And if that's done, of course, the specter of what in each particular territory any particular user suffered by way of damages because of this restraint just between distributors sort of is academic.

MR. DIXON: It will be necessary to know at what price the distributors sold to the immediate purchasers and ultimately to them.

THE COURT: Right. We agree there.

MR. DIXON: It will be necessary to know why the prices were that price.

THE COURT: That's another question.

MR. DIXON: It will be necessary to know that the price at which it was sold was higher than it would have been in the absence of the alleged conspiracy.

THE COURT: Right.

MR. DIXON: This is what I'm talking about when I say impact or fact of damage. There must be some evidence that the price was higher as a result of the conspiracy alleged.

THE COURT: He has to prove damages, true.

MR. DIXON: You have to prove damages.

THE COURT: Yes.

MR. DIXON: But you also have to prove in a liability issue --

This is not just a case, if your Honor please, of the Government suing these individuals and just establishing the fact that there was a violation.

THE COURT: I understand.

MR. DIXON: It is necessary to show damage. There is no liability until the fact of damage is shown. That's fundamental.

There is no liability until --

THE COURT: Well, there may be liability without being able to prove damages.

MR. DIXON: No.

THE COURT: It all depends on how you hitch up the horse.

MR. DIXON: We're talking in that situation, if your Honor please, about a Government case against the individuals. All they had to do was come in here and prove that the Act was being violated in certain ways.

But that is not sufficient to prove liability in a treble damage action. And that's exactly what Judge Decker said in this statement and what all other cases say, too.

THE COURT: I don't know what Judge Decker's case is.

MR. DIXON: Now, I don't believe I'm tilting at windmills. I made a practice of not doing that because it is a waste of time.

But I have been following this case since Mr. Freeman started it. We've attended all these depositions. We know what he's trying to do.

And I say that it's necessary to know that the price charged by the distributor - and we deny we had any control over them, if your Honor please,

and we deny that they were our agents - the price that they charge was higher than it would have been because of the conspiracy alleged.

And, you know, they've started out by getting into these specific transactions themselves. They have been examining the files of distributors over the past several months, trying to get these figures. They know, as we know, that the markups differ for different reasons. And they should know, although they haven't told you so, that in many instances the markups will differ for reasons totally unrelated to the charges of a conspiracy.

Now, if the plaintiffs think that they can make out of this case just that price fix case on the manufacturer's level, without doing it on a transaction by transaction basis to find out what the prices were and why they were charged in those particular cases, then all I can say is maybe they won't do it in their case.

And if your Honor does not throw them out for having failed to prove a case at that time, the defendants certainly intend to bring into this Courtroom those distributors and other witnesses who will testify why those prices were the way they were and why the conspiracies were not responsible for

those prices. That is what I mean when I talk about impact. Impact is a part of the liability issue. And I say on the basis of all the cases we have submitted in the brief, that that has to be proven.

Then I also say this. I agree, I do not have any control over how Mr. Freeman proposes to prove these cases. But I do know that it is my obligation to see to it that if there was no impact from these conspiracies upon the prices charged by distributors in different parts of the country, then it will be my obligation and my intention to bring those witnesses in.

I also say that if the plaintiffs prevail in the first trial, in the liability trial, if your Honor please, then I say to you we must recall those same witnesses.

Now, mind you, in the first trial they testified about impact, the fact of damage itself. Then I say in the second trial on damages I've got to bring them all the way back and go through the same transaction by transaction analysis to determine the exact amount of damages suffered by the plaintiffs.

I say this duplication can only be avoided by a trial where one trier or the jury takes up both issues that are involved here - impact or fact of damage, actual damage.

And I say it should be done on a limited basis, such as what I propose, state by state. And this will make the case manageable before a jury.

THE COURT: How do you get your state by state separation? Why don't you pick out region by region, or county by county?

MR. DIXON: As a matter of fact, the argument that I make raises the question as to whether or not there should be any class action designation at all.

I recognize the fact that somewhere we've got to make a beginning and in some way we've got to get to an end of these cases. And I propose that we set up, tentatively, a state class action, that we pick one of the three cases that are now before this Court that have actually been referred to this Court for all purposes. There are three of those. There's Connecticut, Indiana and Pennsylvania.

That we take one of those three cases - and I don't care which one the plaintiffs want to take, if they want to take any one of those three. Those are the three cases that are here. Set up a class, tentatively set it up, and see how it works out.

May I say that in that particular action all members of that particular class would be bound, your Honor would get some understanding of the

problems that are involved in this case, and certainly I don't understand them at this point having heard what I heard this morning from Mr. Freeman, and I think the lawyers in this case - once they see how that particular one works out - are practical enough to know and to make an effort to dispose of all the other cases, if your Honor please.

But to start this whole thing off with the liability issue or a damage issue, or both, for all the states in the United States -- And what are we going to do in that case? We're going to show, with particular distributors, his prices were not affected at all by these conspiracies.

And I say to you this: the plaintiffs can point to no case that I know of at the present time where there has been an actual trial where similar horizontal and shall I call them supportive vertical conspiracies are alleged.

The only case that Mr. Freeman in his brief claims has the issues here are the Book cases that he was involved in himself.

When you analyze those facts - and I'll ask the Court to do so - you will find that the ultimate question in that case was whether or not there was a conspiracy to refuse to give discounts on prices of

books to libraries and schools. It was essentially a price fix case and did not involve additional conspiracies, as alleged and as now claimed by Mr. Freeman.

Incidentally, Judge Decker is responsible for the language that he uses in his brief. It's a different situation.

Whether or not there is an impact - and now I'm talking about the liability case - will depend upon the facts of each transaction. For example, if the transaction involves a master key system - and, mind you, he hasn't withdrawn his claim that there's a conspiracy on master keys - and the owner insists upon a particular brand, there obviously is no impact from bidding on systems from other manufacturer's systems. In other words, there is no damage in that case and, ergo, there can be no liability.

In the same way procurement practices vary in almost every state - some of which will indicate there is no impact from the restriction.

For example, let's take Pennsylvania. The specifications for the state of Pennsylvania, general state authority building program, was a closed specification restricted to two manufacturers: Best and Falcon. They are not defendants in this case.

Thus precluding all of the defendants from bidding on such state work.

Other states have different procurement programs. You cannot determine the impact of these conspiracies which they claim without an analysis of the situation in each particular state.

Now let's take some other examples. But before I do that, let me say this. There is no national market. There are several markets in which different manufacturers compete. There's a couple of markets where Schlage has most of the business in that state and they are not a defendant in the case.

There are no typical distributors. There are hundreds of different distributors working with hundreds of different contractors under a variety of conditions throughout the country. And there's no uniform type of purchase. There are original installations and there are extensions - ranging in cost from ten or twelve dollars to a few thousand dollars. There is no typical purchaser whose methods are reflective of all others.

Now, Mr. Freeman blithely says in his brief: all we're talking about is damages and we'll worry about that when we get to the damage issue.

I trust that at this point I have made an

impression upon the Court that there can be no liability in a treble damage action unless there is a fact of damage, unless there has been some damage to the plaintiffs in the case. And until that is shown in the liability case there is no liability.

Now, I can give several examples, if your Honor please, some of which are referred to in our complaint.

For example, Mr. Montague represents Amherst Leasing Company, which is set forth as the representative of contractors to represent all contractors throughout the United States.

We have taken the deposition -- we were refused the deposition until your Honor permitted us to take the deposition of Mr. Lefrak, who is supposed to be the head of that outfit. We took the deposition of Mr. Scavo, who is one of the officers of that company.

And what did he tell us? He told us that so far as his company is concerned he bought from just one distributor in that town. And he didn't care what the prices were, whether or not other manufacturers might have it at a lower price or not. He had always bought from this one distributor and, by golly, he was going to continue and he expected to continue to

do that.

There certainly is no impact upon the prices that this man, who is supposed to represent all the contractors --

THE COURT: Who was he dealing with, his brother-in-law or something?

MR. DIXON: No. He was dealing with one of Mr. Donelan's clients.

MR. DONELAN: I'm not his brother-in-law.

MR. DIXON: Now these are situations that we have to go into to get a clear picture as to whether or not there was any liability. And there are several other problems that we will have.

Another problem is one that your Honor already has called our attention to in your decision to deny us summary judgment on our claim that the pass-on theory would prevent these plaintiffs from making a recovery.

And in your memorandum you indicated we will have to take that up at an appropriate time, and the plaintiffs will have to show that they were really damaged.

So the plaintiffs themselves have got to explain to your Honor whether or not the original price of this hardware - less than one percent of any

of these buildings - was actually passed on to the present plaintiffs, all of whom are indirect purchasers. That's another problem.

And they say we can do that very easily on a national class basis? I don't see how they can do it without getting into transactions.

Now let me just add one other thing. I have talked up to now about the impossibility of trying the liability issues in a single trial. What about damage? This is so blithely treated. As a matter of fact, it's not treated at all by Mr. Freeman.

How is he going to determine? I assume that he has in mind that at some point he will establish a percentage overcharge. I suppose he's got to consider the percentage overcharge at the manufacturer's level on the basis of his price fix allegations.

Did they get together? Did they actually agree that they would put a price on their products above their cost level?

Then I suppose he's got to have some sort of a percentage basis, and I'd like to know how he's going to do this, of the extra cost, the additional cost that the plaintiffs were put to by the prices charged by the distributors.

And is there to be a percentage in those

cases where there were actual allocation of territories? And many times there were not allocation of territories.

Is there to be another percentage where they claim on their supportive theory, or whatever we want to call it, that the prices were higher because in some instances they were told by the manufacturers - at least they allege this - what jobs they could have and what jobs they could not have?

I look upon this as just about one of the most impossible tasks that anybody has ever thought of. And Mr. Freeman, up to the present time in his briefs, has given us no idea as to how that is to be done.

I agree, it could be done. If he wants to withdraw all his allegations about other conspiracies and limit it to a price fix conspiracy on the manufacturer's level, I agree he can do it. At least over certain objections we'll file at the time of the trial. But he can do it within the perimeters of what he claims in bifurcating this trial.

Now, how do we defend against percentages that may be allocated to these different conspiracies? We do it by bringing in the same witnesses and all the evidence that we brought in the very

first case on liability.

And what points would we make at the second trial? Just to give your Honor an idea of some of the points we would make in the second trial to minimize damages, we would tell you that we would have evidence that markets are local and both selling and buying practices differ.

We would tell you that the supportive vertical price practices vary between markets.

We would say that some practices and some markets had no impact. I've already given you a few examples of those. For example, another example might be territorial restrictions would be without any impact in very remote area

I hope nobody is here from Boise, Idaho, but I might use that as an example - in contrast to the practices in New York City, where Mr. Freeman himself in his own brief admits that the situation in New York might have been a little bit more competitive because there were more distributors located there or, in his language, the population was greater.

I say we would offer evidence to show that an offense in St. Louis would have no impact in Chicago.

We would offer evidence that in markets where Schlage or other non-defendant manufacturers have

large market shares, our attempts to influence prices, the conspiracies alleged, would be ineffective.

I've talked to you about New York. Any formula which attempted to determine a single or even a few percentage overcharges in a trial on damages would result in overcompensation of some plaintiffs and undercompensation of others.

I say this all leads me to the conclusion that to try to swallow this case in one trial, whether it be liability or damages, or both, is something that this Court should not let itself into. And I defy the plaintiffs to show me a case where there has actually been a trial with so many issues, fundamental issues that are involved.

Now I intended to wind up this argument by telling your Honor what I propose. I guess I have already done that, and we've done that in a memorandum that Sargent and Emhart have proposed.

The other two defendants have a different suggestion for a manner of handling this case, which I simply do not agree with. But I know they want an opportunity to explain that to your Honor.

Thank you.

THE COURT: All right.

MR. FREEMAN: May I respond to Mr. Dixon

now or should I wait until the defendants finish?

MR. BATES: I will be brief, your Honor.

THE COURT: All right.

MR. BATES: I would suggest we go along in order.

I am Walter Bates representing Eaton Corporation.

The problems which Mr. Dixon has outlined here are being grappled with by the best judges and the best counsel I think all across the country. They are very current problems, and I have only a couple of matters to present.

First of all, there's a recent decision on these very problems. The case is the Transit Company Tire antitrust litigation decided by Judge Elmo B. Hunter in the Western District of Missouri on January 15th of this year. I have given a copy of this to Mr. Freeman and the Clerk has handed a copy to the Court just now.

THE COURT: Wait a minute.

This is the Ninth Circuit -- no.

MR. BATES: No sir. That's another one. That's the Kline case. This is the Transit Tire Company case.

I will not review the case. It is available

for the Court. But let me simply try to tie it into the problems, which as I say are being grappled with across the country by courts and counsel.

This was a suit by the transit companies, the bus companies, against five manufacturers of tires for violation of Sections 1 and 2 of the Sherman Act. Section 1 for its lease only policy, whether their lease only policy. Also allocations of customers and markets which are similar to the allegations in the cases before your Honor.

A violation of Section 2 for monopolizing the market for these large transit tires.

Judge Hunter had before him the same questions which we are presenting to this Court. First of all, the management of class actions and certification of classes. Also the problem which has been brought to this Court by the Rule 42 motion of plaintiffs, the separation of liability from damages.

Just very briefly, some of the portions of Judge Hunter's opinion which bear directly on the master key cases. For example, on the question of predominance of common issues of law and fact which plaintiffs must show in order to get this into a class action context, Judge Hunter says:

"In this litigation neither the products

involved nor the purchasers are standardized. Rather, the class includes different size of companies operating under different conditions throughout the United States and the products involved differ in many respects and have been marketed under various arrangements which were reached by different methods at different times."

This is exactly the same type of problems which are inherent in the master key litigation.

On the question of separation of liability and damages, Judge Hunter addresses himself to that, saying:

"Plaintiffs contend that the issue of the amount of damage can be separated from proof of liability or violation and injury, as he defines it, and that under the provisions of Rule 23 these actions may be maintained as class actions with respect to the issues of liability."

THE COURT: What page are you on there?

MR. BATES: It is asserted that if liability..." --

THE COURT: What page are you on?

MR. BATES: I'm on page 29, your Honor.

THE COURT: Yes.

MR. BATES: "It is asserted that if liability

and injury is established the class members may thereafter prove the amounts of their respective individual claims".

Then going over to the next page:

"In the instant litigation it is not at all clear that the issues of liability and damages can be fully separated so that a successful class action as to liability only will resolve all issues but the amount of monetary damage each class is entitled to."

And he develops this and shows very clearly why there cannot be a separation of liability, meaning violation alone, from liability plus fact of damage, which means the measurement of the first dollar of damage.

Then passing on to the management questions to which he addresses himself at page 31, he says:

"The difficulties of management which are likely to be encountered if the alleged class action were allowed relate primarily to the required individual proof of damages."

And there has been quite a bit in the briefing before your Honor on the conservation of judicial energy and the suggestion that perhaps the tentative classes may be declared and we could proceed on that

Judge Hunter, at page 40, addresses himself to that, saying:

"Because the Court has allowed extensive discovery on the class action issues in this litigation and has received a large volume of evidence and the evidentiary hearing on the class action issues, the facts pertaining to the potential management problems have been fully developed. For this reason the Court declines to follow the path of declaring a class action, with the possibility of reviewing the management problems at a later date."

And I suggest that what the Court is saying there is that we have these problems before us now, they should be confronted and not deferred. They should be solved and not put off for solution at a later time.

Now in the reply brief filed on behalf of plaintiffs on the separation, they make much of the Fleet Auto Discount cases pending before Judge McGarr. And Mr. Freeman represents that Judge McGarr, sitting in the Northern District of Illinois, has already declared that the issue of liability will be separated for trial.

That is not the fact, your Honor. He has proceeded on a separation theory for discovery.

Now, that is not the theory on which we have been proceeding in preparing these cases. There has been no suggestion to the Court, this Court, that our discovery should be limited to liability only. That procedure was adopted in the Fleet Discount cases, which are, in effect, Section 1 horizontal price fixing or withdrawal of discounts, which amounts to the same thing.

In that case Judge McGarr did attempt to separate liability from damages. And the problems which that decision engendered are so replete and serve us in good stead to show why we should not follow that.

The decision was first handed down in March. It was re-argued in December. It was reaffirmed in December. And it was re-argued in January at the pre-trial, which Mr. Freeman quotes in his reply memorandum.

But it is obvious that counsel have not been able to prepare the defense of their cases without being able to show that because of the lack of damage, the lack of impact of damage, there was simply no antitrust violation in the plaintiffs.

You cannot decide antitrust violation in a vacuum in treble damage actions. This is what the

plaintiffs are attempting to do in that case, this is what they are attempting to thrust on this Court in this case.

But we must go through with the determination of liability as it applies to these plaintiffs by showing that one plaintiff suffered one dollar worth of damage and that the next plaintiff suffered damage. Not measuring perhaps to its nth degree, but we must get far enough along to show the impact of damage, the fact of damage plus that first dollar of damage. This is not proposed in this case.

Let me just wind this portion up by quoting from the transcript before Judge McGarr to show the problems which the separation engenders. Judge McGarr says at page 12 of the transcript:

"The distinction I made between the fact of damage and the extent of damage I am aware is troublesome to you. It was troublesome to me. I think, nonetheless, that it was a valid distinction and one that we can somehow work with."

He goes on, "Now where to draw the line in each particular instance as to how much discovery you need to explore the concept of the fact of damage is one that I guess we will just have to approach on an ad hoc basis."

And they have been back before that Court on any number of instances arguing that question. Defendants must have the right to go into the damage not only for discovery but, more importantly, for trial, in order to disprove the antitrust violation.

He finally ends up - and this is the last of this:

"I see we have a basic conceptual difference here. I respect your opinion and your obvious ability in these matters. I have been asked to reconsider this many times, and I have. But I have long since learned that infallibility has not been visited upon me and I will consider it again in light of the Kline decision."

The Kline decision is the one to which Mr. Dixon referred and I believe which Mr. Barnett will discuss.

THE COURT: That's the one out of the Ninth Circuit?

MR. BATES: Yes sir. This is what we are asking the Court here to do is to consider the question of the separation in light of the Kline decision and also in the light of the bus Transit Tire decision, which I just handed up.

One more point here, your Honor, and see if

we can bring the point we are trying to make down to specifics.

You will recall in the trial of the Government case against Eaton, Yale & Towne - now Eaton Manufacturing Company - and in the decision written in that case there were two specific jobs referred to. One was the Campbell Soup job and the other was 277 Park Avenue.

In the Campbell Soup job the evidence showed, and your Honor found, that there was a bid by a Texas distributor, Harley Webb, for this particular Campbell Soup building hardware requirement. There was also a bid by the Tri-State Company in Philadelphia.

Your Honor will recall that Harley Webb, the Texas distributor, was successful in that bid. Then when he got into supplying the job there was an arrangement made whereby he purchased certain of the materials through Tri-State. And it was that arrangement which your Honor found constituted a violation of the antitrust laws.

Now, taking that into this case, Campbell Soup had its deal with the distributor. That price didn't change. There was nothing to show it was not a competitive price. In fact, the evidence was it

was a competitive price.

It was the arrangement which was entered into later by the distributors with the participation of the manufacturer which your Honor characterized as the manufacturer entering into the arena of competition where it should not have entered.

But the point here is there exists the violation in the vacuum. But in order for these plaintiffs to capitalize on that violation they must go and show that there was an impact on the purchaser, Campbell Soup, and that there was a measurable impact, there was one dollar of damage; that the price was increased by at least one dollar.

Now in this case that, obviously, could not be shown. It was not even attempted to be shown. And it couldn't be shown.

The other example, and following that up then, for this purpose that is not a violation of the antitrust laws because there is no fact of damage or impact.

And the other one - and this is where I will wind up - is the case of 277 Park Avenue. And your Honor will remember that in that case the Yale distributor, Hebert, was told that the contractor would not purchase the hardware through him.

The hardware was purchased, the Yale hardware, through another non-Yale distributor through whom we put the business. And once again that was ruled as the manufacturers entering into the arena of competition.

Following that through, the deal was made. It was a deal satisfactory to the contractor. There was no increase of the price and, therefore, no damage, no impact and no violation in the treble damage context.

This is the distinction which we think has to be made in these cases and it is a distinction which can only be made by in whatever trial mode these cases go forward. They must be tried to a conclusion for all purposes.

Thank you, your Honor.

MR. BARNETT: If your Honor please, I'm John Barnett. I represent Sargent & Company. I would like to touch on one aspect of Mr. Freeman's proposal.

His proposal, on analysis, really does not separate for trial the issues of liability and damage. What he is really proposing, in essence, is a single trial to establish a fund, to be followed by some simple ministerial process such as reference to a Master to divide up that fund among th various

plaintiffs.

In the trial to establish the fund the jury would be asked to consider evidence going to whether there was a conspiracy to fix prices or to eliminate competition on master key jobs by action of the defendants in restricting their respective distributo in various ways.

Then at the same trial the jury would also be asked to consider evidence, in Mr. Freeman's words, quote, "... of the increase in prices of contract hardware for master key jobs above the levels that would have prevailed absent the illegal restraints on competition".

Therefore, what he is saying is that the first trial will go to both the question of liability and generalized damages.

Now, as Mr. Dixon has already pointed out, Mr. Freeman hasn't even considered how you get from the question of liability to the question of damages which is really the impact question. How do you get from a determination of liability to a determination of damages? And he has avoided that question.

In addition, however, I would like to indicate that on the basis of certain recent decisions, generalized damages are legally improper as a

matter of law.

In the Ninth Circuit Court of Appeals there have been two or three recent decisions which bear on the issue of generalized damages. One is the Western Liquid Asphalt cases in which the Court of Appeals reversed a District Court which had granted summary judgment for the defendants against certain non-direct purchaser plaintiffs.

The Court of Appeals decision, if your Honor will recall, is similar to that which -- the conclusion of the Ninth Circuit was similar to that which your Honor reached in this case; that it was improper for a court to grant summary judgment because the plaintiffs should have the opportunity at least of attempting to establish, notwithstanding that they were remote purchasers, that they had suffered some damage.

THE COURT: Was that case out there in the Ninth Circuit presented on the same theory of a pass-on defense?

MR. BARNETT: Yes, it was, your Honor. It was the same theory and the same result.

But the Court went on to say, in regard to the question of damage, that the Hanover Shoe case, which was the basis for the pass-on theory, may be

held to require, if it is applied in this instance, a proof of particularized damages for a particular plaintiff.

The Court said: "The usual rules of law relating to proof of causation and damages and in regard to damages properly analyzed would suggest that the Hanover Shoe case has ruled out the concept of generalized damages".

And that seems to me to be particularly applicable to this case because here we are talking about remote purchasers; that is to say, the owners of buildings who have purchased from general contractors who, in turn, have purchased from distributors who, in turn, have purchased from the defendants.

THE COURT: That was left hanging in Hanover, wasn't it; that same idea?

MR. BARNETT: Yes, it was.

THE COURT: It may be tough to prove, but it's there.

MR. BARNETT: Well, I think that what I'm saying is that it may be tough to prove, but the only way that it is permitted to be proved under the Hanover case is by a particular plaintiff, not a bunch of plaintiffs in a class action, or as in this

case a cluster of class actions consolidated for trial - that is to say, a particular plaintiff proving his damages, and how they were transmitted to him down through the line of distribution.

A recent case also dealing with the question of generalized damages has been previously referred to, and it's Kline versus Coldwell Banker & Company. This is a December, 1974 decision of the Ninth Circuit, a copy of which was previously supplied to your Honor.

That case involved a determination of class status of a class of all persons who had sold residential real estate in the Los Angeles County area for a four-year period.

The Court of Appeals reversed the District Court there and denied class status, and cited as among the reasons for that particular decision the need for each member of the proposed plaintiff class to prove his individual damages before a single jury.

Also cited with approval in that case and relevant on the point which I am trying to make is another Ninth Circuit case, In Re: Hotel Telephone Charges, which is cited in the Kline case and also appears in Paragraph 75, 145 of the CCH Trade Regulations Service.

It is simply not sufficient for the plaintiff to suggest, as Mr. Freeman has, at what he calls the initial trial as to liability for the defendants, to have the opportunity at that time to present proof of the different selling or purchasing practices that prevail in this particular industry.

It is not difficult to conclude the unmanageability of a trial in which the defendants would then have to prove the different selling practices of hundreds of distributors and the different purchasing practices of the fifty states, their myriad subdivisions, and the thousands of general contractor who built the buildings for the various plaintiff groups.

THE COURT: What are you reading from there? That's something you made up, or what?

MR. BARNETT: No.

What I'm saying here is that Mr. Freeman, in his memorandum of November 15, 1974, dismisses the problem that we would be prevented at the initial trial from trying to show that various different practices prevailed in regard to the purchase and sal of these products.

And what I'm saying is that if we were to proceed along the lines that Mr. Freeman has

suggested and the defendants were then given the opportunity to prove all those things, we would have to prove them by bringing in the practices of distributors, we would have to bring in the purchasing practices of the various plaintiff states, all of their subdivisions, the variations which have already been cited by Mr. Dixon. And that at the initial trial.

What we are proposing, I believe, is what would at least constitute a manageable trial in which the defendants, if it were thought necessary at that time, would bring in the purchasing practices of a particular state and its various subdivisions, if in fact they differed from that of the state itself.

In summary, then, it is apparent that what Mr. Freeman calls a separation of the issues of liability and damages is ill-conceived both because it ignores the problem of getting to the impact question, and I might add that the difficulty here in regard to impact should be emphasized in a slightly different way, I think, from what your Honor suggested.

Your Honor suggested at one point in a comment that the impact question was one of target

area and I think that may well be a part of the issue.

THE COURT: I mean if the source or the basis of the argument about impact is the statute's provision as to injury caused by, and if you are translating that phrase to mean an impact resulting from, then I say that the only judicial interpretation of "caused by" has been in that sense of a target of, and not impact; not damage impact.

So I mean you picked out this word and you've put it in quotation marks, italicized it and put a double underline under it, and you keep talking about "impact". And I'm trying to find out just why this has the particular kind of significance that you give it so as to hang the whole argument on it, other than the tone of your voice. Because is there some authority that specifically construes the statute to mean impact?

I mean I listened to this talk about impact--

MR. BARNETT: Yes, I think I can -- Perhaps without referring to something more, I may not be able to give you precisely the authorities, but I think we can collect them. I think they have been collected in our briefs.

But I think that there is a distinction

between the question of impact as it affects the so-called target area issue and impact as it affects the damage issue.

THE COURT: You are using it in that sense, the latter sense.

MR. BARNETT: In the damage issue sense.

THE COURT: And I'm just wondering where you get it from.

MR. BARNETT: In the target area sense, I think there are a line of cases - one of which I think went to the Supreme Court, the Billy Baxter case, which did talk about impact in terms of target area. And there I think the issue is whether the particular plaintiff is within the area in which the particular conspiracy is designed to affect the market.

Now, I can give you an example. You've heard Mr. Dixon quote from the case that was decided for Sargent & Company by Judge Decker. And the impact question there is clear. There were certain allegations and certain proof very similar to some of the issues that are raised in this case.

And it's pretty apparent that, prima facie, certain restrictions on distributors might have an impact on the purchaser of hardware, but not on a distributor of that hardware. And, therefore, the

distributor would not have been in the target area of that conspiracy, even though an ultimate purchaser such as, let's say, a state might have been.

Now that would be the target area analysis. But that, I think, is quite different from the question of liability to the question of damages, which requires that one demonstrate that the liability claimed has had some, I will call it, "impact" on the plaintiff involved.

I mean we are not arguing that --

THE COURT: All right.

MR. BARNETT: -- that these particular plaintiffs are outside of a conspiracy which might be established from the facts that he is alleging.

THE COURT: They are in the target area, you say.

MR. BARNETT: We are not denying they are in the target area.

THE COURT: Okay.

MR. BARNETT: We are saying that the concept of impact, as we are asserting it, is quite different and is supported by the cases as well.

One of the cases cited by Mr. Freeman, the Zenith versus Hazeltine Radio is one of the leading cases on the subject.

THE COURT: You see, as I understand it this construction of the antitrust law, I think it is Section 1, "caused by", limiting that to a target area has been recognized to be a judicial construction of a statutory limit on the general principle of causation which would permit damages by one not in the target area.

So the causation of damage does exist, but by statute is limited only to those in the target area - as I understand the way the statute is construed.

Now when you concede that these plaintiffs here, or the members of the class, are within the target area, there is nothing left in the construction of that statute or any other kind of judicial rationale that I am aware of that says there is not damage causation here, that you can apply the theory of causation to find damage flowing from this wrongful conduct.

MR. BARNETT: Well, I'm not saying that you can't, if your Honor please. I'm not saying you can't.

I'm saying that it is required that the plaintiffs do show that there is a causal connection between the alleged incidents which they claim show

liability and any damage which their particular plaintiffs have suffered.

THE COURT: All right.

MR. BARNETT: In other words, it isn't a question of showing events creating liability in a vacuum as one --

I mean conceivably in a Government action all you've got to show is that certain violations of the statute have occurred. This is not that kind of a case.

I mean it's possible that some of the things that Mr. Freeman has cited might create that kind of a cause of action for the Government. But he is not trying to do that. What he's trying to do is connect up those events which might create liability in the Government's action sense with some kind of injury suffered by these plaintiffs. And it's that causal connection that we're referring to.

If your Honor would like nothing further on that I will let Mr. Donelan mop up for the defense.

THE COURT: All right. Thank you, Mr. Barnett.

MR. DONELAN: I think you ought to hear about my brother-in-law, your Honor.

Your Honor, my name is Charles Donelan. I

represent the defendant Ilco.

THE COURT: Who?

MR. DONELAN: Defendant Ilco; Independent Lock Company. And I'm not surprised that your Honor is not completely familiar with us.

One of the phrases which your Honor used--

THE COURT: I'm not really familiar with any of you fellows.

MR. DONELAN: Well, I hope that remains the case, your Honor.

THE COURT: I mean that's my misfortune. I mean if I had a share of stock, or even if my granddaughter had one, I would be disqualified under the new proposals of Congress.

MR. DONELAN: I kind of wish you did have a share of stock of Ilco, your Honor. It might make this argument a little more personal.

One of the things that you've talked about and that Mr. Freeman has stated here this morning was that the only way that the conspiracy could be enforced is through the dealer's control of the distributors. And this was going to be done by threats of termination and refusal to deal. Your Honor mentioned later on that the distributors could be controlled agents of the manufacturers, that this

was the cornerstone of the conspiracy.

Now if, in fact, this is so, then this requirement which we urge upon you of transactional analysis - which is a ten million dollar word for having to look into why the prices were what they were and to see whether, in fact, one of the plaintiffs paid more than he ought. That's all we're talking about when we talk about fact of damage.

We say that the law is very simple and has been repeated over and over, that in order to collect damages one must show that one has sustained damages. That's what we talk about when we say fact of damage.

Well, what makes the situation different for the defendant Ilco -- and I should add, your Honor, that Ilco is a manufacturer who sells residential locks. We have a division called Lockwood. That is the Division that we're talking about in this case. That is the builder's hardware division.

What I did is I looked at 1968, which was the zenith of our sales in the last seven or eight years, and in that year we smashed the market to the tune of twenty-two million dollars total sales.

We lost that year $631,000 in breakage. The Lockwood Division, your Honor, which is the subject of this lawsuit, in that stellar year did $2,400,000.

We had 188 accounts in 1968 of Lockwood. Nine of those accounts did over $50,000.

THE COURT: How many accounts?

MR. DONELAN: Nine purchased over $50,000 worth of locks from Lockwood; from Ilco.

Sixteen of them purchased over twenty-five.

THE COURT: I'm surprised a fellow like Freemak keeps you in there.

MR. DONELAN: Well, I'm getting to that, your Honor.

THE COURT: He certainly didn't know that when he started.

MR. DONELAN: I want to talk about that.

Eighteen of them purchased over $10,000. One hundred seventy of those accounts, 90 percent of our accounts, purchased less than $10,000 worth of merchandise from us in 1968.

Let's take Region 4, which is the big talk here.

THE COURT: What is it all leading up to?

MR. DONELAN: What it is leading up to, your Honor, is this is not an ordinary price fix. This is not Empicillin, this is not Library Books. This is a whole different ball game.

When I read the briefs I thought I had the

wrong briefs. I thought I had the Library Books case. It didn't talk about locks; it talks about library books.

I'm talking about locks, facts, realities.

In Region 4, your Honor - which is Alaska, Hawaii, California, New Mexico, Montana, Wyoming, Arizona, Washington, Oregon, all of those people - we had one account, one who did over $50,000; one over $25,000; two over $10,000.

THE COURT: What's the minnow doing here among these barracudas?

MR. DONELAN: That's the question, your Honor.

THE COURT: Just because you don't know how to forge for business the way they do and make it go doesn't mean --

MR. DONELAN: Now I think, your Honor, there's a great deal more to it than that.

All through this mountain of paper which you've been presented by the plaintiffs which trumpets over and over again this major control of our distributors, what in the world would a distributor bother with us for if we call him up and say: well, all right, we're going to cut you out - now this is total purchases we're talking about - so

the nine or eight thousand dollars that you purchased from us last year at hopefully a profit of maybe seven or eight hundred dollars, we're going to deprive you of that, Mr. Distributor, and you should cringe in the corner and say, "Please don't do that, I'll do anything you ask".

This is sheer nonsense. To say that we could control these people is just not there.

Now, one other fact.

THE COURT: Well, we are not arguing the merits right now.

MR. DONELAN: No, I'm not arguing the merits either, your Honor.

What I'm arguing is that I have got to, if this company is even going to make it to trial, have an opportunity of showing that there was no damage by anything which it did. And a trial proposal which presumes damage because he comes in and shows a few excerpts out of some documents out of context, a trial proposal which presumes damage, your Honor, takes us into that factor.

Now one other factor which hasn't reached here is, of course, that with the exception I think of one account, all of the Lockwood accounts carry another line of hardware. They're not exclusive

accounts at all. They carry another line. Because we were never that big.

There are other factors that bear. But the point, your Honor, is Mr. Freeman's proposal cannot work legally because the fact of damage must be proven. And if it's not, it means we are going to have to come back.

If we have to come back we won't be here. We can't afford it. And that is a factor which should bear.

The Kline case, which your Honor has and I'm sure will read, the Kline case says something different to me. The Kline case says that the combination of Rule 23 and the Sherman Act --

THE COURT: The Kline case I don't think would make you jointly and severally liable for goods sold by these other defendants.

I mean that seemed to be some fear that was expressed by the Judge in that case.

MR. DONELAN: I don't understand that, your Honor. I thought that the allegation here was that we were jointly and severally liable.

If we are not, I'd be delighted to hear it.

THE COURT: Well, I don't know. Maybe I can work something out for you with Mr. Freeman.

MR. DONELAN: I'm most acceptable to that suggestion, your Honor. And I'm getting to that.

I think there's a carrot in Mr. Freeman's brief which I think he extends to your Honor - and that is the carrot of settlement.

I think he says: Look, go with my proposal which will sweep damage right in without proof, and if I win they will settle out.

I'm here to tell you that I can't settle out. My company's profits for a year would probably not pay Mr. Freeman's fees for a month. We do not have the capacity to take care of that. We are not in position to do that.

We have got one shot, your Honor, and that is a trial either on the horizontal issue of the price fix conspiracy - and I think your Honor has correctly seen that that is one issue which could be handled. And that takes us to the manageability problem.

The Kline case, it seems to me, says that due process has not yet left us, even though you combine Rule 23 and the Sherman Act. It has not left us.

The fact of damage has yet to be proven and still has to be proven. If that has to be proven, your Honor, take the horizontal. Try that. Try it all the way through. If it's there, it's there.

If it's not there, then the case should be over or he's got his vertical cases left.

Your Honor doesn't have to reach all of this vertical transactional analysis any way near in the depth that you would if you tried the vertical conspiracies all in this mish-mash.

That is why we split with the other defendants and propose that this horizontal issue be tried alone, the horizontal issue of book prices alone. Because, your Honor, as I understand your remarks this morning, you are seeking to find out whether Mr. Freeman wanted to recover once or twice before trebling for the book price conspiracy and again later on.

I don't think he ever gave you that answer. My understanding is he wants to recover twice.

THE COURT: I've got him down on the record.

MR. DONELAN: If he doesn't wish to recover twice, if he only wants to go on the book price conspiracy, it seems to me further on that we should try the horizontal conspiracy alone.

And your Honor can save the questions of class determination, can save all of this mountain of litigation. This is one step up the mountain, your Honor, which you can take and not have any

problems when the future is looked at.

Thank you, your Honor.

THE COURT: All right.

Just a minute now. I'm going to have to take a recess somewhere along the line.

MR. FREEMAN: This would be a good time.

THE COURT: I was thinking that, too.

Short recess.

(Short Recess)

MR. FREEMAN: May I briefly respond, your Honor, to the different arguments made by defendants.

I think the first thing to point out with respect to this case, and it differentiates it from all of the cases relied upon by defendants, is that we are already far down the road. We are ready for trial.

We have substantially completed our discovery and the plaintiffs have, pursuant to your Honor's direction, filed a de gnation of evidence, documents, testimony and witnesses that we intend to produce at trial. We are ready to try the liability issue as we have defined it.

We are ready to attempt to convince the jury that there was an illegal agreement, that the defendants enforced that agreement by overt acts, concerted action, and that that agreement was undertaken to affect prices and did affect prices.

We are not, at the initial stage, asking for any damage fund. We are not asking for any kind of general damages that would somehow cause the defendants to enter into a settlement.

We are contending that at this point in the case the jury can decide that there was a conspiracy, that the conspiracy was enforced and that

that conspiracy affected the prices paid by anyone who purchased contract hardware for master key jobs, inflated to price levels. All of these various factors that the defendants argued about actually go to the damage issue.

The defendants contend that each transaction, each purchase of contract hardware is unique. And from that premise they argue that, therefore, there are no common issues which predominate, that the cases aren't manageable, the cases can't be consolidated for trial and the issues of liability and damages can't be separated.

There's really three answers that we have made to that contention in our memoranda in support of the motion to separate the issues of damage and liability.

First, the portrayal of the industry and the portrayal of the defendants' sales practices is not borne out by the evidence. The evidence refutes the various differences which the defendants say exist in these transactions.

Second, the case law holds, without contradiction, that in these kind of circumstances where you are dealing with a conspiracy to fix, maintain or stabilize prices and a suit is brought by the

purchaser, the ultimate purchaser, that these various elements or various details and differences which defendants emphasize go to the amount of damages.

And then the other point, the other answer to it is - and I think it's the crucial answer just from a standpoint as a practical matter, and it's the answer that Judge Decker gave in the Children's Books cases - this defense of so-called uniqueness, unique transactions really may go to the liability case.

And if Mr. Dixon or Mr. Donelan can make the same arguments that they've made today and convince the jury that this is so complex and all these transactions are so different and the circumstances under which they sell are completely different, then they may convince the jury that they are not liable and that would end the case.

The plaintiffs contend that that issue is the issue that should be posed to the jury.

I would like to take up those answers in reverse order and refer first to the uniqueness defense and describe --

THE COURT: That's not the reverse order. That's jumping in the middle.

MR. FREEMAN: Yes.

Well, describe the experience in the Books case because I think it is so applicable to the situation here. Because in the Books case we had a situation where the defendants contended that each book was unique, no book is the same, they're all different lengths, different illustrations, they are marketed differently, each purchaser has different requirements; some buy directly from the publisher, some from the wholesaler, some by competitive bid, some by overall requirement contracts. There were a whole series of details with respect to the transactions that were different.

In fact, Judge Kraft initially held in Philadelphia that these details of the uniqueness of the books made the case unmanageable and, therefore, refused to certify the class action. That was in the School District of Philadelphia versus Harper & Rowe Publishers.

Well, thereafter state-wide class actions were initiated, somewhat similar to this situation. Discovery proceeded on the merits.

The plaintiffs got access to the Grand Jury documents and the Grand Jury testimony. And when Judge Decker looked at the problem again he discovered

that these details didn't make any difference to the operation of the conspiracy. That the horizontal conspiracy and then all these separate hundreds of vertical conspiracies to enforce this horizontal agreement not to give discounts still operated on the ultimate purchasers of books, irrespective of where they were located in the country, irrespective of how they purchased the books, irrespective of whether they required competitive bids or not.

And he held in his class action decision that the national class and the state-wide classes were appropriate.

In that decision he pointed out that if, in fact, books are unique, if in fact the defendants can convince the jury that books are so unique that there could never be a conspiracy to fix their prices, they will win at trial. But the plaintiffs are entitled to go to trial on that issue.

Thereafter, the case proceeded on the assumption that the issues would be separated. The liability and damage issues would be separated.

Towards the end of the case he issued an order which we quote at length in our reply brief, memorandum opinion and order, wherein he consolidated all of the pending cases statewide class actions for

trial. He transferred all of the cases into the Northern District of Illinois under Section 1404(a), consolidated the cases for trial - over the objection of the defendants that he couldn't consolidate the State of Illinois with the Commonwealth of Pennsylvania because there were different distributors in both states, that there were all these separate different lines of distribution that affected each purchaser differently.

Judge Decker said that the overriding issue of conspiracy and how it affected the price was something that should be tried in one consolidated proceeding.

The idea of separating damages from liability was ultimately dropped by the plaintiffs because by the time we got to trial there was only one defendant left. There were initially 37 defendants. By the time we got to trial the one defendant remained and the ase was settled on the second day of trial.

But the fact remains that the case proceeded quickly to trial and the procedures were fashioned in a way very similar to what we ask for here.

In the Auto Fleet Discount case Judge McGarr has issued an order which we quote in our reply brief, and he has talked at length in the transcript

because the defendants continue to raise this question. He has ordered or set a trial date for the liability issues alone. That trial date is set in May.

And he has made the same distinction that we seek to make here, over the same objections raised by defendants, that there is a transaction by transaction analysis that must be made to determine what they referred to as impact.

The issue in Auto Fleet Discount is a little bit different, however, because in Auto Fleet Judge McGarr has postponed discovery on the transaction by transaction basis. And the defendants contend that this somehow prejudices their ability to go to the jury on liability.

In the Children's Books case the defendants were given limited discovery into the purchasing practices of the various plaintiffs. They were allowed to go around the country and depose various purchasing agents and ask them how they decided to purchase books and what their reasons were to attempt to substantiate this defense that each transaction is different.

THE COURT: If the Court were to set a trial date on the issue of liability, do I understand

that you are ready to proceed? You don't require any further discovery?

MR. FREEMAN: That is correct, your Honor.

THE COURT: Even though they bring in their various grounds or contentions of justification or showing that what they did was not unreasonable?

MR. FREEMAN: Yes.

Well, I don't want to argue the evidence because I think --

THE COURT: No, I don't want you to argue it. I just want to find out now whether when you say that you're all set to go ahead on the liability issue you won't need any more discovery.

MR. FREEMAN: No.

We have set forth our case in our designation of evidence.

And I would like to point out, in response to Mr. Donelan who says that Ilco would not have ever terminated a distributor, wanted all the business it could get and was such a small company - in fact, he referred to a Mr. Cure and in fact in 1962 Mr. Cure sought to take jobs that had been reserved for the Russwin Los Angeles dealer in California.

And on page 23 we quote the transcript of a telephone conversation between Mr. Cure and his sales

manager from Ilco in which Ilco tells Mr. Cure that he is not to bid on Russwin's job because then Russwin might come back and bid on an Ilco job.

Thereafter Mr. Cure continued to try to compete in violation of the restraints that Ilco imposed and they terminated Mr. Cure. He ultimately filed a lawsuit in California and achieved a substantial settlement. The case never went to trial.

But in fact if the defendants are correct in their characterization of the industry, there would be no purpose to impose these restraints.

For instance, Mr. Dixon has given you a number of ways in which --

THE COURT: That's jury argument. You don't need that for me, do you?

MR. FREEMAN: I would like to just emphasize, your Honor, that none of these matters which the defendants say differentiate transactions really affected the operation of the conspiracy. It didn't matter where the purchaser was located, it didn't matter whether the owner preferred to extend a master key system or had open specifications.

THE COURT: That's all a kind of economic theory or some kind of an analysis of our free enterprise system, which I think has been resolved by

the enactment of the antitrust law.

I don't think it is necessary to prove in each case what the economic impact is throughout the entire industry or throughout the whole country. Certain practices have been forbidden. And if they are, the decision as to whether that has an adverse economic impact seems to me has been made by the law.

MR. FREEMAN: Well, that's the point that Judge McGarr makes, that's the point that was made in Ohio Valley Electric by Judge Feinberg. That's the point we're making here.

That in this sort of case where the conspiracy is designed to inflate the prices paid by the ultimate purchaser, that the impact flows from the illegal conduct and its enforcement.

The fact that you show the conspiracy was effective in doing what it intended to achieve proves the causation. That is the element of causation. All of these other details go to the amount of damages.

And once you get past the causative element, then the damage question is one that does not have to be proved with the same precision. And that's the distinction drawn in the cases which the defendants rely upon.

As your Honor pointed out, the cases cited by defendants - Billy Baxter, Continental Oil, the Mid-America case filed by a Sargent distributor - all concerned competitors or distributors who had to show that they were within the target area of the conspiracy, that the conspiracy somehow operated to their detriment. Whereas, a conspiracy to fix the prices of a product that is sold, the impact is inherent or the causation is inherent in the fact of the conspiracy.

But I think we can go beyond that because, as we point out in our reply brief, the whole conspiracy, the whole allocation of jobs here was designed to keep the prices high.

And from the memoranda exchanged between the higher sales executives in these companies they constantly refer to the fact that if dealers were to break the master key system --

THE COURT: Well, you just say that. I mean it was designed to keep the prices high.

They just didn't want their fellows to work too hard. They wanted to divide the work out.

MR. FREEMAN: Well, that's an argument they can make.

THE COURT: Yes.

Well, it has just as much validity as yours.

I mean have you got anything to show that it made the prices high, or is that just an argument you want to make?

MR. FREEMAN: We have about forty pages devoted to that in our summary of evidence showing that, first, as the defendants state themselves --

THE COURT: What makes you so sure that the price would have been lower?

MR. FREEMAN: Because in the instances where the conspiracy broke down, in those instances where you had a maverick, the price was, in fact, lower.

THE COURT: You've got some evidence, then?

MR. FREEMAN: We have numerous instances.

THE COURT: All right.

MR. FREEMAN: In those instances where there was competition the defendants did not have to give price concessions.

As a matter of fact, the evidence shows that where an owner or a contractor sought to go outside his state to get a competitive bid from some other dealer, that the defendants arranged for those dealers to submit collusive bids to protect the local dealer and keep the price high.

THE COURT: It's just to avoid duplication

or extra work.

MR. FREEMAN: If that were true, they wouldn't have established the exact price at which these distributors were to quote. Because as we point out in our examples, when the West Baptist Hospital in Birmingham wanted quotes Russwin arranged for the New Orleans dealer, the Montgomery dealer and the dealer in several other cities outside of Alabama, dealers in several other cities to quote a precise figure to general contractors in those areas.

Russwin found out who the general contractors were bidding on the hospital job and thereby quoted prices that were higher than what the fellow in Birmingham, Alabama was going to quote to keep the prices up.

I don't think there is any question, your Honor, from the evidence which we quote at 11 and 12 of our reply brief --

THE COURT: You think you've got some proof that they kept the price high.

MR. FREEMAN: Oh, yes.

The whole point of the conspiracy was to prevent price competition. And when they talk about owner's preference, the whole point of the conspiracy

was explained by these men as trying to prevent what they referred to as economic pressure from causing an owner to change brands of hardware by economic pressure that was simply competitive bid.

The whole point of the conspiracy was to prevent price competition --

THE COURT: How do you expect to prove the proof of damages when you get to that?

MR. FREEMAN: You mean after establishing the liability?

THE COURT: Suppose you were to establish liability, yes.

Have you thought about that?

MR. FREEMAN: Yes.

THE COURT: You don't mind giving a peek at your thoughts?

MR. FREEMAN: No.

THE COURT: Okay. I mean in this group.

MR. FREEMAN: As a matter of fact, Mr. Dixon referred to the work that we had been doing towards that end. At the same time that we are asking your Honor to separate the issues we have been engaged in the inspection of records of distributors in all of these various states that have filed suit.

And we have gone a long way towards collecting

these records and starting to analyze them, to show that the markup on protected jobs was far greater than the markup on the competitive jobs.

This has become a very, very time-consuming and a very expensive proposition for the parties. There's no question about it.

THE COURT: Well, what I'm trying to get at is can't it all be translated or reduced, rather, to some kind of a flat formula percentage of the price charged that would represent what you claim is damages?

MR. FREEMAN: Well, yes, there are three elements.

There is the specific agreement to raise prices - and we're making an analysis of the simultaneous price rises to show that.

There is the ten to twenty percent factor which arises from the fact that the defendants did not have to give price concessions or discounts to dealers on these protected jobs.

Then the third factor is the amount of overcharge the dealer was able to realize from being protected.

A formula could be achieved for the first two. A rough formula could be achieved for the third.

But there are situations - and we recognize there are situations - in which the damages of individual members will vary.

In fact, there are situations where the conspiracy broke down, a dealer came in on a protected job and bid twenty or thirty percent below what the protected dealer bid. And on those cases, of course, the individual did not suffer any amount of damages due to that third element - the inflation of prices by the distributors.

And we would use those to calculate the damages, use those to calculate the overcharges that should have been present on every -- I mean the discounts that should have been present on every one of these jobs had there not been the elimination of competition.

THE COURT: Okay.

MR. FREEMAN: But in the first trial, the third element, the overcharge by the distributor may not be susceptible to a precise formula calculation at that time.

THE COURT: I didn't mean to throw you off.

MR. FREEMAN: No.

THE COURT: You're finished?

MR. FREEMAN: No.

THE COURT: Okay. Back to where you were, then.

MR. FREEMAN: I would draw the Court's attention to the series of recent decisions with respect to actions similar to this against defendants for conspiracies to inflate prices and in the context of suits brought by purchasers which draw the distinction between liability and damage and have ordered the cases to go forward on trial of liability alone.

We have mentioned Auto Fleet. There is also the Ampicillin antitrust litigation wherein Judge Sirica analyzed contentions made by Bristol-Myers and Beecham, which were again very similar to the contentions made here; that the price of the drugs may depend on the drugstore from where you buy them and there's a lot of different factors which influence the price after it leaves the manufacturer's hands.

And he said that those considerations go to the amount of damages which can be tried after the liability of the defendants is established or not established.

I think the advantage that is to be derived from our suggestion is the fact that all of the plaintiffs would be bound into this initial trial.

We have presented our evidence in our pre-trial brief. We have also written a pre-trial memorandum of law with respect to the conspiracy and with respect to evidence which constitutes our pre-trial memorandum of law.

The states, every one, would then be bound by this initial determination. If the defendants win, that would end the case.

Under this single state approach that Mr. Dixon has advocated you would have the necessity of trying state after state after state in the original jurisdictions where the cases were filed. Because if the defendants can convince the jury that there was not one conspiracy or not one series of conspiracies which enforced a system to restrain competition, but there were in fact hundreds of separate vertical conspiracies and there were also hundreds of conspiracies at the local level among distributors which affected the price, then you would have a different situation for each statewide class action and each state would not be bound by the determination in one state's case.

Under our proposal all of the states have agreed to go forward and present the same evidence with respect to the liability issues. They will

rely on the same evidence. They will all depend on the same evidence to prove their case.

Just in closing, I would like to point out that this case differs quite markedly from the bus tires case to which Mr. Bates made reference, differs from the Kline case to which Mr. Barnett made reference. Because, in fact, those cases looked at the allegations of the complaints and found them wanting.

In the bus tire case Judge Hunter stated that he had to decide the class issue on what the complaints alleged and what he felt the plaintiffs could prove.

In this case we ask the Court to look at our designation of evidence, to look at the case as we intend to present it and make the determination whether the issues can be separated on that basis.

There's no need to speculate as the courts had to speculate in the bus tire case, and in Kline, and as Judge Kraft had speculated in Children's Books about what might happen down the road.

We've actually come through three to four years of pre-trial discovery and the fact that this case is ready for trial refutes the idea that

the case can't be managed.

THE COURT: All right.

Now, we have never really designated the [illegible] classes here, have we, or sub-classes?

Have we done anything about that?

I mean we haven't followed the book.

MR. FREEMAN: No. We haven't because the classes were designated by Judge Wood in Philadelphia as a national class of public purchasers and a national class of private purchasers.

Since that time fourteen states have filed statewide class actions. And the plaintiffs propose that the statewide class actions be certified and that the national class action be certified to take in all those states which have not sought to represent themselves and that the national class action of private purchasers continue.

We filed a separate brief on that, your Honor, which points to the several cases in which this has been done.

I would mention the Gypsum Wallboard antitrust case. Our memorandum reproduces the order issued by Judge Zirpoli in this case establishing statewide classes of public entities and then a national class of public entities.

The same procedure has been followed by Judge Pointer in the Cast Iron Pipe cases.

THE COURT: Judge Pointer. Where is he, Mississippi?

MR. FREEMAN: Alabama.

As a matter of fact, in the Cast Iron Pipe cases, where he certified a national class action and individual statewide class actions as well, they were carved out of the national class action.

I would mention Cast Iron Pipe was a case which did go to trial.

THE COURT: Is that Pointer's case?

MR. FREEMAN: Yes. Judge Pointer's case went to trial before a jury.

THE COURT: What is the name of it?

MR. FREEMAN: Cast Iron Pipe Antitrust Litigation.

By these same plaintiffs: State of Illinois, City of Nashville, Tennessee, State of Indiana.

It went to trial. The jury hung 9-to-2 or 8-to-3 for the plaintiffs, and then the cases were settled before it was re-tried. But it did, in fact, go to trial.

THE COURT: We only have six-man juries here.

MR. FREEMAN: They had twelve there. But then one got sick, so they had eleven at the end.

THE COURT: We start with eight, should somebody get sick. But we wind up with six only.

I don't think we have any exception for antitrust cases. I think our rule is all civil cases.

MR. FREEMAN: It's the same in the Northern District of Illinois.

But in those cases and in the Books case the national classes and statewide classes were certificated, the cases were administered, the cases were resolved and resolved on a relatively prompt basis.

We contend again that this experience, this actual experience in the administration of cases, which was easily as complex as the defendants want to make this case, belies the notion that these cases can't be tried.

Thank you, your Honor.

THE COURT: All right.

MR. MONTAGUE: Good morning, your Honor. I am Laddie Montague, co-liaison counsel, and representing the plaintiffs in the Amherst Leasing and City of Philadelphia cases, which are the national class actions which were initially upheld by Judge

Wood back in 1970, after - I might add, your Honor - quite a vigorous oral argument and briefing session as vigorous as what went on today.

I hope that those briefs and those papers are before your Honor. I imagine they were transferred up to the Court - so that you would know the arguments which Judge Wood considered then, which are very similar to the arguments which were made today.

We have not reproduced our briefs; in other words, filed additional briefs which just reiterated the material that was already presented to Judge Wood.

THE COURY: I don't know whether copies of the briefs you submitted came along with the file from down there.

MR. MONTAGUE: If not, your Honor, I would ask leave, if I may, if I could supply the Court with copies of those papers. I'd be happy to reproduce them when I get back to my office and send copies.

THE COURT: Yes. I wish you would. Because I don't have any present recollection.

But then that's not surprising because I try to dismiss this case from my mind as quickly and as completely as I can between episodes.

MR. MONTAGUE: Your Honor, I would like to first very briefly just answer one specific allegation which was made with respect to Amherst Leasing Corporation and the deposition of Mr. Scavo.

It was stated on the record that Amherst Leasing disregarded lower prices from other distributors or didn't care about lower prices from other distributors.

I noticed that was in the defendant's brief also, without any reference to the record. I tried to find such a reference and I couldn't. I don't believe that statement is accurate.

In reading over Mr. Scavo's deposition what I did find was that they purchased Lockwood locks - that's Mr. Donelan's client; that there were two distributors that it looked to in New York City whose prices were relatively the same - and that's on pages 23 and 24 of his deposition; that to get replacements or repairs from anyone but the original supplier of those master key systems would be "extremely costly or difficult" - that appeared on page 22 of his deposition; and, lastly, that he tried once or twice to get extensions or additions from someone other than the original supplier, but he found that he could not do so - and that is on page

73 and pages 85 and 86 of his deposition.

So that, in effect, what Amherst Leasing and the other plaintiffs in that case have found coincide very closely to what the allegations were in the complaint with respect to their personal experience in the purchase and acquisition of locks and replacement of locks.

With respect to the impact argument which is made by the defendants, which seems to be the bellwether of class action opposition these days, Judge Zirpoli, who tried a test case in the Gypsum Wallboard cases, came to the conclusion after trial; approximately a seventy page opinion. He dealt with impact with one sentence.

He stated: "The prices paid and the terms and conditions of sale received by plaintiffs were directly affected by the stabilization conspiracy and resulted in direct impact on these plaintiffs". And that's at 326 Fed. Supp. 295 at page 307.

In the City of Philadelphia's class action against the American Oil Company in 53 Federal Rules Decision 45, at page 67, Judge Augelli, who was then Chief Judge, upheld a class action on behalf of governmental entities, bulk purchasers of gasoline and taxi cab drivers.

He said, in upholding that class, that: "The issues of liability can be separated from questions of individual damage when deciding if common issues of fact and law predominate. In price fixing antitrust cases the issues of impact of the conspiracy and damages became one in the same, since the amount of damages measures the impact of the illegal conspiracy".

Carried to its logical extension, that impact has to be shown for every class member. There can never be class action. No class action would be manageable.

THE COURT: Is that bad?

MR. MONTAGUE: I think it's very bad, your Honor. I think it would be a grave injustice.

THE COURT: To whom, the Judges?

MR. MONTAGUE: Not to the Judges, your Honor.

I think that class actions have proven, even their greatest critics of Rule 23 have to concede that there are certainly instances when class action is a great judicial vehicle for obtaining justice for a great many people who otherwise would be deprived of justice.

I think that the fact in answer to that

argument that you have to show impact towards every class member is what led Judge McGarr to reach the conclusion which he reached. And I strongly would compel your Honor to read the remarks in his transcript, which are cited in the reply brief, concerning the separation of issues.

THE COURT: Where is that?

MR. MONTAGUE: I can get you the page, rather than read that.

THE COURT: In Mr. Freeman's reply brief?

MR. FREEMAN: Yes, your Honor.

THE COURT: What part?

MR. FREEMAN: Judge McGarr is quoted in that, your Honor. His order appears at page 7 and then his language appears at pages 10 and 13.

MR. MONTAGUE: The language I would like to stress, your Honor, is from a transcript on January 14, 1975 which Mr. Bates referred to. I won't read the whole thing. But in talking about impact he said:

"That is almost prima facie, really, in my mind. When you establish a conspiracy to fix prices or to agree on discounts the fact that somebody was damaged by it requires very little proof. Because it is almost of the essence of such a conspiracy, if

one ever existed, that it was for the benefit of the conspirators and to the detriment of the persons who were intended to be affected by it".

THE COURT: Nominal damages, at least?

MR. MONTAGUE: That's right.

THE COURT: You accepted that pretty fast.

MR. MONTAGUE: Now, there have been several cases alluded to by the defendants as recent cases which have delved into this issue of class actions and their propriety.

Defendants went far to look for such cases - Kansas City and the Ninth Circuit. But there have also been many recent cases within the Second Circuit.

THE COURT: Kansas City is not far. You have Judge Decker out there -- no.

MR. MONTAGUE: Becker.

THE COURT: Judge Becker.

MR. MONTAGUE: Well, your Honor, I have to confess that I was personally involved in the bus tires case; I can attest that it is pretty far.

However, recently Judge Gurfein, just prior to going up to the Second Circuit, upheld the class action in Professional Adjusting Systems of America, Inc. versus General Adjustment Bureau,

64 Federal Rules Decision 35.

That case, your Honor, involved a group boycott where it was necessary for each -- if you take and extend the defendants' argument and accept it, it would have been necessary for each plaintiff, each class member to show that it was affected by the group boycott - that it was, in fact, boycotted and suffered business as a result of it.

The Court, however, upheld there was a class, upheld that common questions of law and fact existed, and said with respect to the conspiracy issues:

"To try this issue in a separate action after separate action would be wasteful. Only if questions affecting individual members alone predominate or if a class is not superior to other available methods should the class be denied."

"On the other hand, to bar a class would mean that G.A.B." -- that was the defendant -- "... could never be challenged on a nationwide conspiracy allegedly focused in G.A.B."

"If it is desirable that the full scope be allowed for proof of the conspiracy alleged, there is no way to do that except by a class action".

And that is what the defendants are fighting

here and that's what the plaintiffs are proponents of here - having an opportunity to show this Court that there was, in fact, a national conspiracy which affected governmental entities and builders throughout the nation.

It is the only way it can be done, through a class action, and it's the only way that those who are injured can have redress.

Another recent case, your Honor, in the Southern District of New York is Kuttner vs. Fried in 18 Federal Rules Service 2nd, 1026.

THE COURT: Who is the Judge?

MR. MONTAGUE: I don't know. I don't have in front of me, your Honor, who the Judge is. It was a Southern District case.

THE COURT: I don't get the Federal Rules Service.

MR. MONTAGUE: I'd be happy to send a xerox to you and to the defendants. I don't have a copy with me, your Honor.

There, in upholding a class, the Court stated and recognized that:

"It is true that damages may differ for each member of the class, but our Court of Appeals has long recognized that although it may place a great

burden on the trial court a separate determination of damage to individual class members may be necessary."

"Judge Motley of this Court has noted that a class action may be maintained even though the measure of damages as to each member of the class may be different. Proof of individual damages may effectively be severed and treated in subsequent proceedings."

I think, your Honor, that the plaintiffs have proceeded, they have pre-tried their cases as a class action. Plaintiffs are now ready to go to trial with their cases as nationwide class actions.

Defendants, in their recent briefs opposing the class, have really gone into the merits of the case and have said it shouldn't be a class because we can show that there's no national conspiracy, that markets are separate, and so forth. And that's their defense.

As Mr. Freeman said, that, in effect, if they prevail and they prevail on a liability trial, that's finished business. They're successful. They go home. We lose.

And with respect to Mr. Donelan, I can assure that his client will go home with a lot more money in its pocket than if it tries liability and damages

together.

One of the oft overlooked advantages of Rule 23 is that it equally protects defendants as well as plaintiffs. And if the defendants are not liable, if they haven't violated the law, then they will reap the benefits of Rule 23 and they will have the issue of their acts disposed of in their favor once and for all.

Now, one of the things that has made this action to date, your Honor, I think so manageable - and it has been conducted with great efficiency - is that there was an early determination of class action back in Philadelphia before the cases were transferred to you.

If you compare this case, where an alleged builder/owner class and an alleged national class was brought, and you compare it to similar cases where there wasn't an early determination of the class action, the parties before this Court, at least on the plaintiffs' side, and the number of lawyers that fill the Courtroom every time there is a hearing are substantially less.

For example, in the Gypsum Wallboard case there were well over a thousand plaintiffs before the Court.

THE COURT: That's the reason for an early determination.

MR. MONTAGUE: Very much so, your Honor.

THE COURT: I never thought of that. I thought it had something to do with preserving the rights of members of a class.

MR. MONTAGUE: Well, in the Library Books case, which was originally brought as a class action and denied by Judge Kraft in Philadelphia --

THE COURT: I don't think the reason you have just announced has ever been cited by anybody. Has it?

MR. MONTAGUE: Yes.

THE COURT: To cut down the number of lawyers in the case?

MR. MONTAGUE: The number of parties before the Court, which includes number of lawyers in a case.

But Judge Decker, upon reconsideration, upheld the national and statewide classes in Library Books and emphasized that on page 490 of his opinion. That's 301 F. Supp. 490.

THE COURT: I wouldn't dare do that here.

MR. MONTAGUE: And said that if the original class motion had been granted the parties before the

Court would have been much less and the case would have been in a better posture.

What I am suggesting is here that if now the class is decertified, that the Court is liable to find itself with a great many more parties before it, requests by newly filed plaintiffs to have --

THE COURT: Is there any particular notice that has to go out?

MR. MONTAGUE: Yes, your Honor.

I believe unless defendants acquiesce otherwise, which happened in a recent case in the Third Circuit, Katz vs. Carte Blanche, notice should go out to the class members prior to trial.

So they have an opportunity to exclude themselves from the class prior to a determination on the merits. That's what the rule provides.

Thank you, your Honor.

THE COURT: Just a minute.

Do you concur with Mr. Freeman that the cause of action upon which the claim for damages is based here is the maintenance of a prive level by reason of a horizontal conspiracy to maintain prices?

MR. MONTAGUE: Yes, I do, your Honor.

THE COURT: And that the evidence of implementation or putting teeth or strength into

that horizontal agreement is shown by these various vertical restrictions placed upon their distributors?

MR. MONTAGUE: Yes.

THE COURT: And that none of the damages which you seek flow specifically from the restraint placed upon a distributor? Except as it was assisted to maintain those prices through the horizontal agreement among all these defendants here?

MR. MONTAGUE: I'll give a qualified yes with that.

THE COURT: What is the qualification?

MR. MONTAGUE: Well, I qualify it for this reason:

That I don't believe that a vertical conspiracy with one defendant, if just one of these four defendants had the practice which is complained of vertically --

THE COURT: Well, that has to do with its evidentiary value, doesn't it?

MR. MONTAGUE: Yes, I agree with that.

THE COURT: Rather with whether it is a theory upon which you seek to recover damages.

MR. MONTAGUE: That's correct.

THE COURT: Is that right?

MR. MONTAGUE: That is correct.

THE COURT: All right.

Anybody mention New Jersey yet?

MR. CALMANN: I'm sorry, your Honor. Excuse me.

THE COURT: Go ahead.

MR. CALMANN: May it please the Court. My name is Arnold Calmann. I appear on behalf of William F. Hyland, Attorney General.

The motion before the Court is a motion to reconsider this Court's ruling of October 30th, 1974, denying New Jersey's original motion to amend its complaint.

THE COURT: I sort of ruled on that once, didn't I?

MR. CALMANN: Yes, you did, your Honor.

THE COURT: You couldn't do that, I said. You're in here and you've got to ride along.

MR. CALMANN: Well, I believe the Court said that it was preferable to apply the class action allegations and enable us to move for a certification of a class, instead of asserting Section 12(b) of the New Jersey Antitrust Act.

THE COURT: Yes.

Now your problem is, if I recall, New Jersey would be now designated as a member of a

class of states. We have a national classification. Then we need a classification under that of states. So New Jersey would be then a state entitled to maintain and to be bound by the determinations.

And if I understand your position, it is that while you purport to be in here for the state, there are also a bunch of subordinate or subdivisions of the state which have authority of their own and whom you are not authorized to represent or appear for.

Is that it?

MR. CALMANN: Once the state denies the subdivisions and agencies the permission to sue, which Section 12(b) of our Act provides, the plaintiff in this particular action is the unified unitary state, as it is composed of all subdivisions and agencies.

That is consistent with Rederal Rule 17(b), which states the power to sue is determined by the state.

THE COURT: Yes. Okay.

MR. CALMANN: We would, of course, be one of the states in this action, in that sense.

But we are a unified plaintiff under Section 12(b) of the New Jersey Antitrust Act.

That would mean that nobody can opt out, no subdivision or agency can opt out of our action. We bring the action on behalf of everybody. There's one plaintiff.

That means the state gets a total recovery, should we be able to prove the allegations against defendants.

THE COURT: Right.

MR. CALMANN: That's one of the benefits which Section 12(b) provides.

This Court indicated in its ruling that it was somewhat concerned about Rule 23 (d) and (e), which is that should this be considered a voluntary dismissal notices would have to go out to the subdivisions and agencies indicating that we are removing our class action allegations from our complaint.

We had initially - and it was our mistake - included the class action allegations in addition to Section 12(b) by ruling that we must go forward with a Rule 23 class action. We cannot implement Section 12(b). That section gives us centralized antitrust enforcement.

If the subdivisions have to come to the central antitrust agency we can find out about

additional antitrust violations in the local communities. We can bring an action on behalf of everybody, forbidding them from opting out of the state action and thus increasing antitrust deterrence by maintaining a complete recovery.

If we do that we obtain other benefits through negotiations with defendants, should that occur in this case or in other cases.

THE COURT: What do you want to do now?

MR. CALMANN: What I would like to do is to assert Section 12(b) and delete the class action allegations.

Once we do that, the total state is bound, there's no res judicata question. The state is bound. The state is the state, as well as all its subdivisions and agencies.

THE COURT: You mean this is sort of an added authority and added responsibility that you want to undertake?

MR. CALMANN: Correct.

The state has a revolving fund of thousands and millions of dollars accumulated through antitrust cases.

THE COURT: I don't see any wrong with that, really.

Does anybody?

MR. CALMANN: Well, the defendants have fought vociferously.

THE COURT: The defendants fought this?

MR. CALMANN: Yes.

THE COURT: There is someone, then.

Well, it makes your hand a little stronger in court. But do you really need that approval here in order to have these subdivisions of New Jersey bound to follow this 12(b), is it, of the state?

MR. CALMANN: It's not a matter of permission, as such, from the Court at this point of time. Rather, it is a motion to delete our class action allegations so that we don't confuse the issue.

As it stands now, we have class action allegations and Section 12(b) allegations. That was our mistake, we admit.

We are not challenging Rule 23. Rule 23 is not in conflict with Section 12(b).

Section 12(b) gave the Attorney General substantive powers to determine what type of anti-trust action would be brought. In every class action notice that has ever gone out in any New Jersey cases there have been exclusions from that class action.

Whether it be by inadvertence or negligence of the subdivisions or agencies, we are not sure. But no matter what we do, they will be excluded for some reason.

Section 12(b) by the state legislature enables the state to bring this action on behalf of everybody. They cannot opt out. We have to maintain the responsibility for those subdivisions and agencies. It creates an efficiency of administration.

THE COURT: All right. You want to be in this case as New Jersey, then?

MR. CALMANN: Correct.

THE COURT: And that's all?

MR. CALMANN: As a single plaintiff.

THE COURT: You don't want to be bringing a class action on behalf of people in New Jersey?

MR. CALMANN: No, no.

This is not a consumer class action or parens patriae at all.

THE COURT: You just want to be one of the states, then.

MR. CALMANN: Correct. As the state is a unitary state under our statute.

THE COURT: And the effect of that will be to

make all these subdivisions really bound by the class determination here because they are bound to accept what you do.

MR. CALMANN: Correct, your Honor.

THE COURT: I don't see what's wrong with that.

What have we done that's wrong so far?

MR. CALMANN: Well, this Court has denied the state its motion to amend its complaint to delete the class action allegations and to rely on our state statute.

And that statute is consistent with the Federal Rules, particularly 17(b), capacity to sue.

THE COURT: And that's all that would be necessary?

MR. CALMANN: That's all. We maintain the responsibility. If there is any problem --

THE COURT: Reconsider and allow you to file your amendment?

MR. CALMANN: Correct.

MR. BATES: Your Honor, if I may speak briefly.

THE COURT: Mr. Bates.

MR. BATES: This question was up before your Honor. It was also before Judge McGarr.

Before, your Honor ruled the same motion to amend out; Rule 23, in effect.

And Judge McGarr denied New Jersey's motion. This Court denied New Jersey's motion.

In the Northern District of Illinois New Jersey went to the Seventh Circuit. The Seventh Circuit held it was not an appealable order and certiorari was denied by the Supreme Court.

So, in effect, this has been tried twice.

If it's a political question within New Jersey as to whether those subdivisions can opt out, I'm not sure that that's a matter for this Court's determination. That's a political matter for New Jersey.

THE COURT: Right.

MR. BATES: And that is what they have said by their statute.

By the point is that New Jersey sought to file this case in this Court under the Federal Rules, including Rule 23, and alleged Rule 23. They alleged that they represent not only the state, but all the political subdivisions and all of the public agencies within that state.

Now as defendants in this action we can assume that the state may buy, may purchase the

building containing building hardware in different manners. The public agencies may buy in different manners and the political subdivisions may buy in different manners.

We are entitled to examine those purchase practices as we have discussed all morning, in order to find out whether there was any impact on any action of any of these defendants.

So we are entitled to the protection of Rule 23 and we are furthermore entitled to the protection of Rule 23 making the determination in this case final on all members of the class.

THE COURT: Don't you get all the protection that you can under a class action designation, which would amount to a sub-class under subdivisions of the state as a sub-class, or political entities within the state as a sub-class in each state?

Don't you get all the protection of that under the New Jersey statute and under the representation of the Attorney General to this Court?

MR. BATES: I don't believe so, your Honor, and I don't believe they have ever represented that to this Court, that they have the right to bind all of their political subdivisions. They only say that these people have no right to opt out.

But in the practical sense we have to go to all of those different purchasers in order to prepare our case. Under the class action procedure we have that right.

But under this, where we have only the state, the monolithic state, I don't believe that has yet been determined.

In any event, this question has been presented, it has been briefed, it has been argued, it has been decided. It has been decided in the Northern District adverse to New Jersey and this Court has given New Jersey the right to renew its motion if the proposed class is incapable of certification.

We are at that point now, where this Court is considering certification of classes. I would suggest that the Court consider that if the New Jersey class is incapable of certification, then New Jersey may wish to come back.

THE COURT: Yes.

What do you say about that?

MR. CALMANN: May I reply, your Honor, to a few points?

THE COURT: Yes.

MR. CALMANN: First of all, in the Fleet Discount litigation, Judge McGarr's opinion - and

with all due respect to Judge McGarr - I think the defendants in that case will readily concede is an extremely confusing and ambiguous opinion.

Judge McGarr's opinion differs in rationale and in its understanding of Section 12(b) of the New Jersey Act. Judge McGarr never referred to the permission provision or the fact that we can direct it to the subdivisions to bring an action.

The whole history of the power of the state over its subdivisions was ignored by Judge McGarr, or I should say overlooked.

Mr. Bates refers to the fact that there may have to be a need for examination of purchasing procedures and practices. That does not differ --

THE COURT: Well, I understand Mr. Bates to give you an easy way out of this.

He says if you can guarantee somehow to bind the subdivisions, the lesser political entities in New Jersey, by your representation, then he doesn't have any problem.

MR. CALMANN: We can guarantee Mr. Bates that. Once the state brings its action pursuant to Section 12(b) they are bound to the state.

THE COURT: Is that right?

MR. CALMANN: They are the state.

MR. BATES: I don't see why that isn't already done under Rule 23, your Honor. This is my point. They've not before made that representation.

THE COURT: No, I'm not asking you whether it has already been done or whether we can't do it for every state by creating these subdivisions.

But this is, apparently, the only state where they have such a problem, or where they are alert to it.

MR. CALMANN: May I point out to this Court that the issue that went on appeal in the Seventh Circuit and to the Supreme Court was supported by Connecticut and thirty-five other states in an amicus curiae brief to the Supreme Court.

I think that tests to the importance of this issue, although no other state has examined the same issue.

THE COURT: What case is that that you are talking about?

MR. CALMANN: The same issue we have here, Section 12(b).

THE COURT: What case is it?

MR. CALMANN: That is the Fleet Discount litigation before Judge McGarr.

THE COURT: That went to the Supreme Court?

MR. CALMANN: The petition for certiorari by New Jersey, which was supported by Connecticut and thirty-five other states in an amicus curiae brief.

THE COURT: What happened?

MR. CALMANN: The Court denied petition for certiorari.

THE COURT: That's not a decision allowing it.

MR. CALMANN: Well, that was strictly on the motion to amend, your Honor. The fact that the Seventh Circuit held it a non-final order, such that it was not appealable at that time.

We made the same mistake there as we did here. The antitrust agency was only a year in operation at the time in which these cases were instituted and initiated. And the Antitrust Act was only two-and-a-half years old. So there were problems in implementing this particular provision.

But the centralized antitrust agency and the initial unitary state action should not be jeopardized by our own mistake.

We made a mistake. We included class action allegations. Once we delete those class action allegations the subdivisions' responsibilities are now in the hands of the state.

THE COURT: All right.

Now suppose that is granted - you delete the class action allegations. Are these subdivisions then bound by any determination? Do they fit in as members of some class already designated, or don't they?

MR. CALMANN: No. They are part of the state. It is the state action.

THE COURT: I'm looking at Mr. Bates.

MR. CALMANN: I'm sorry. Excuse me, your Honor.

MR. BATES: I don't know, your Honor.

He says they are not bound. He says they are not bound as they would be bound by determination under Rule 23.

THE COURT: He says they are bound under the law of the state.

MR. CALMANN: Correct.

MR. BATES: They are not allowed to opt out is all I understand him to be saying.

MR. CALMANN: I'm not quite sure of Mr. Bates' definition of being bound. If they can't opt out and this action binds them as to the case which we have brought, how can they not but be bound?

THE COURT: All right.

MR. CALHANN: Thank you, your Honor.

MR. FREEMAN: Your Honor, maybe there is a practical way to resolve it.

If he drops his class action the statute of limitations is going to run very soon on the subdivisions within the State of New Jersey and whether or not they are bound they won't have any right of action.

Because the statute is only tolled by reason of his class action for those public entities.

THE COURT: I'm not so sure about that, whether it's tolled or not tolled. Because there has been a class action designation.

There are not too many cases on it. There is a lot of talk about it. I think Judge Fulham decided the other way in some case, that the designation of the class doesn't delay the institution of the action. The action is in court. The fact you don't pick the class till later I don't think means that the statute has run against them. But then I don't think we have to decide that.

But what is raised here is whether there are any other people of this kind that ought to be considered.

I guess you haven't moved to come in, so I

guess we don't need to do anything about it - except that states have not yet been designated as members of a class and no notice has gone to them.

Now who sends the notice and to what states - every one of the fifty?

MR. FREEMAN: That is one question that was just raised that I wanted to address myself to, your Honor. The defendants have suggested at one point that perhaps notice should be delayed pending trial of the cases at Sargent and Emhart. But the defendants can insist upon notice going out in order to protect themselves from a res judicata standpoint.

So if the defendants insist that notice be sent to class members, the plaintiffs would suggest that each state attorney general send notice to the public entities within his state, and then the national class representative would send notice to the public entities within those states who are not represented specifically by an attorney general.

So that you would be certificating the thirteen or fourteen statewide class actions that are now pending with the attorney general, or the state represented by the attorney general as the class representative; and then the national class action

with the City of Philadelphia as the representative of all other public entities similarly situated. The notice would go out in the fourteen states from the attorney general as class representative, and then the rest of the states from the City of Philadelphia.

That's if the defendants insist upon notice. Because they are the ones who are protected by notice. If notice goes out, then all class members are bound. If notice does not go out, the class members have the opportunity perhaps sometime down the road to relitigate. They would not be bound in. So that's a choice I think the defendants can make.

MR. MONTAGUE: Your Honor, one other point with respect to the notice is that the class identification is basically already accomplished as a result of other litigation which upheld the same national classes and in which national notice went out.

That is, in both the Plumbing Fixtures and the Gypsum Wallboard cases national notice was given to governmental entities and to the builder/owner classes.

THE COURT: In this case has it gone out?

MR. MONTAGUE: No, it has not in this case.

But in those other cases where it has gone out lists have already been compiled. So that the

identity of the class or classes is already accomplished.

THE COURT: Where, in some other case?

MR. MONTAGUE: Yes. But it's on file. I mean the names and addresses are all compiled.

THE COURT: Is there any problem here with respect to the cost of notifying the members of the class?

MR. MONTAGUE: No, your Honor.

MR. FREEMAN: I would emphasize Mr. Montague's point. In the Gypsum Wallboard cases the notification went out very similarly to the way we suggested, and the same people who were overcharged --

THE COURT: I will ask then I think Mr. Montague to submit a proposed order of notice with the list of those who should receive notice and I will issue an order.

I will ask both counsel, Mr. Freeman as well, to collaborate on an order of notice, so that we will be sure that everybody who is now contemplated as possibly being a member of a class with a claim will have some notice of it.

MR. FREEMAN: Mr. Montague and I will agree on the form of the notice to go out and then I will submit or each state will submit the list of

entities within that state, and Mr. Montague can submit the list of class members for the other states.

THE COURT: All right.

MR. DIXON: We will want an opportunity, of course, to discuss the language of that notice.

THE COURT: Of course.

You wouldn't think of moving without Mr. Dixon's consideration and approval, would you?

MR. FREEMAN: No.

MR. MONTAGUE: We welcome it, your Honor.

MR. FREEMAN: We will sit down with him and discuss the proposed form of notice; to the extent we can agree we will try to agree.

THE COURT: All right.

MR. DIXON: I would like to be heard for a few minutes in rebuttal.

THE COURT: Do you fellows want to come back after lunch, or do you want --

MR. DIXON: This will take me approximately five-and-a-half minutes, your Honor.

THE COURT: All right.

MR. DIXON: I do not see how the statement by the Court of the issues and the acknowledgment of those issues by Mr. Montague and Mr. Freeman in

any way change the argument that we have made today.

That both in a trial on liability and in a trial on damages it will be incumbent upon the defendants in each of those trials to contest the impact that was made or to point out that the damage was not caused by the conspiracies alleged.

I repeat that since that is necessary in both trials, that both trials, if they are conceived on a national basis, become unmanageable because of the differences that we will be able to point out and they become duplicative because we have to use the same witnesses in both cases.

I would like to add --

THE COURT: Just a minute.

As I understand it, Mr. Freeman concedes that all of these reasonable explanations for what these defendants have done, wherever adopted, are admissible to show your reasons, no matter where, and that this is in defense against a claim that you maintain prices on a general national basis.

MR. DIXON: In both cases; that is, in both the --

THE COURT: Well, we are talking liability at this point.

MR. DIXON: Yes; all right.

THE COURT: Yes.

So I mean why does it need a separate case, if you can get all these separate instances in on the main case on liability?

You are getting the benefit of all of your reasonable explanations, no matter where they were adopted, in this one case.

MR. DIXON: And those explanations include, if your Honor please, evidence that particular plaintiffs in this case were not injured as a result of the things.

This brings me back, and I want once more to explain that when I was talking about the necessity of proving fact of damage in the liability case I was not stating that the impact had anything to do with the target area.

I was stating a fundamental principle that is stated so clearly in the case of Barnett & Son against Outboard Marine Corporation, where the Court said this, at page -- well, states this: --

THE COURT: From where?

MR. DIXON: In the Barnett & Son versus Outboard Marine Corporation, at page 144. It was a case decided on 9/30/74.

THE COURT: I know. But does it have a

volume citation?

MR. FREEMAN: Your Honor, it has been officially reported in F.R.D. We cite it in our reply brief. It is 64 Federal Rules Decision 43, District Court in Delaware, 1974.

It may not have been reported when the defendants wrote their b[illegible]f.

MR. DIXON: I just want to read this one paragraph, without the numerous citations to authorities.

"In a treble damage action such as this, the finding of an antitrust violation does not result in liability. The statute creates a private remedy only to the extent that each person has been 'injured in his business or property by reason of anything forbidden by the antitrust laws'."

"Thus it is this private damage which is an essential element of any plaintiff's cause of action. Thus the determination of an essential element of the present cause of action, that is, the fact of damage..."

not the amount; the fact of damage,

"... can only be determined on an individual basis".

We insist upon the right to do that in this

case and then to do so will, in our opinion, make a national class a completely unmanageable case.

And that is the reason that we have suggested that no class determination be made on a national basis and that we proceed to see what those problems are in the proposal that I have made.

Thank you, your Honor.

THE COURT: That's it?

MR. FREEMAN: Your Honor, since he has raised a new case I'd just like to point out that we do discuss it in our brief. It concerns again a distributor rather than an end purchaser.

And I would ask whether we can set some target date for trial or some target date for cutoff of discovery.

The plaintiffs are substantially complete with their discovery for the liability issue, and perhaps we could move the case along by giving the defendants a certain amount of time.

MR. DIXON: I would simply request at this time that when the Court makes a determination as to how the case is to go forward, that there then be an immediate pre-trial session at which we will work out specifically the remaining elements of discovery that are necessary.

I, of course, can't help but point out that if a national class action is necessary --

THE COURT: All right. I guess that's all right.

MR. FREEMAN: Thank you, your Honor.

THE COURT: Are you going to submit something specific that is designed to satisfy or lay the qualms of Mr. Bates?

MR. CALMANN: I will try, your Honor. I will speak to Mr. Bates.

THE COURT: Why don't you try to do that.

MR. CALMANN: Okay.

THE COURT: So we will get that part of it straightened out.

Is that it?

Well, I'm sorry, but that's all there is.

* * *

C E R T I F I C A T E

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MASTER KEY ANTITRUST LITIGATION	:	MDL DOCKET 45

I hereby certify that the within and foregoing is a true and accurate transcript of my original stenographic notes taken to record all proceedings in the above-entitled cause, in the United States District Court, for the District of Connecticut, at Hartford, Connecticut, on January 27, 1975, before Hon. M. Joseph Blumenfeld, U.S.D.J.

Official Court Reporter

DATED: FEBRUARY 6, 1975.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE:	:	
	:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST	:	
LITIGATION	:	ALL CASES

RULING ON PENDING MOTIONS

This litigation, consolidated under the multidistrict procedures for pretrial proceedings in this district, involves antitrust claims by purchasers of master key systems against four defendant manufacturers. The cases have been summarized before, see In re Master Key Antitrust Litigation, M.D.L. No. 45 (D. Conn. Aug. 22, 1973), reported at 1973-2 Trade Cases ¶ 74,680, and familiarity with them will be presumed here.[1/] Two major motions are presently awaiting decision. The

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1/ It may be useful, however, to set out for the record a clarification of the plaintiffs' claims which has now occurred. First, they claim a conspiracy among the four defendants to fix prices. Second, they claim that a horizontal conspiracy existed among the defendants to eliminate inter- and intra-brand competition among their dealers, thus keeping prices above competitive levels. This conspiracy was allegedly implemented by a series of illegal vertical restrictions. The damage claims arise from the horizontal, not the vertical, conduct. Thus the plaintiffs plan to prove illegal vertical restrictions upon the dealers only to demonstrate by implication the existence of a horizontal conspiracy among the defendants to reduce competition (and thus maintain prices above the competitive level) at the dealer level. The plaintiffs assert that they therefore need not and will not introduce evidence as to all of the illegal vertical restrictions they claim to have discovered. See Transcript of Hearing, Jan. [illegible], 1975, at 10-23.

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defendants have moved to set aside the provisional class certification long ago entered in two of these cases, see City of Philadelphia v. Embart Corp., 50 F.R.D. 232 (E.D. Pa. 1970), and to have class certification denied in those cases in which the issue has not been ruled upon. The plaintiffs have moved to transfer those cases not presently in this district for all purposes to this court and to consolidate all of the cases for trial, see 28 U.S.C. § 1404(a) (1970); Fed.R.Civ.P. 42(a). Further, the plaintiffs seek to separate the trial into two stages--the first to prove liability; the second to show damages--, see Fed.R.Civ.P. 42(b).

I. Class Certification

The rules for certification of a class action of this sort are by now well known. The factors analyzed below track the requirements contained in Fed.R.Civ.P. 23(a), (b)(3).[2/]

There is no question but that the classes here are so numerous as to render joinder of all the members impractical. Fed.R.Civ.P. 23(a)(1). But the defendants argue that almost none of the other class action requirements are satisfied. Fed.R.Civ.P. 23(a)(2) requires that there be questions of law or fact common to the class; Fed.R.Civ.P. 23(b)(3) requires that these common questions predominate over those not common

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2/ Re the inapplicability of Fed.R.Civ.P. 23(b)(2), see, e.g., Ungar v. Dunkin' Donuts of America, Inc., 1975 Trade Cases ¶ 60,204 (E.D. Pa. 1975), at 65,780-81.

to the class. In these cases the common questions are certainly central at least on the issue of liability. The plaintiffs' claims all go to group conduct by the defendants. It is true, as the defendants urge, that there may be local variations in marketing practices and the like. It is also true that in order for all the plaintiffs to recover it must be shown that the effects of the defendants' alleged anti-competitive behavior extended to all the areas in which plaintiffs made master key purchases. But these facts do not change the central and common element of these cases--the question whether the defendants acted in concert to decrease competition among them. If this element is shown, differences in the way the plan was manifested around the country are unimportant, except perhaps as they may affect the amounts of recovery different plaintiffs may obtain. Nor does this last qualification militate against class certification; in few class actions is there a simple per capita measure of recovery. Here the differences may be due to different conduct of buyers and sellers (as opposed, perhaps, to differences only among buyers in some other class actions). But the differences in damage recoveries may be handled by splitting the trial into liability and damage components, as discussed infra. And the proper inquiry in certifying a class for purposes of trying liability is simply whether common issues predominate as to the liability issue. See Ungar v. Dunkin' Donuts of America, Inc., 1975 Trade Cases ¶ 60,204 (E.D. Pa. 1975), at 65,784,

and cases cited therein. As to this inquiry, I hold that the common issues predominate.[3/]

The last requirement of Fed.R.Civ.P. 23(a) is that the representative parties adequately protect the interests of the class.[4/] The defendants do not challenge the allegations

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3/ The defendants argue that there is no liability without injury, and that a crucial element of the plaintiffs' case will, therefore, be proving damage. The argument continues: as the complexities of showing damage to each plaintiff are involved at the liability stage, it may be seen that common issues do not predominate even as to this portion of the case.

I believe this classic defense argument, cf. "Eisen IV, Class Actions One Year Later," 711 ATRR, Apr. 29, 1975, at B-1, B-4, to be a red herring, notwithstanding its acceptance by some courts. See, e.g., In re Transit Co. Tire Antitrust Litigation, 1975 Trade Cases ¶ 60,144 (W.D. Mo. 1975), at 65,418-19. If the plaintiffs introduce proof (or if it may be stipulated) at the liability stage that they bought master key systems and that the defendants engaged in a pervasive nationwide course of action that had the effect of stabilizing prices at supracompetitive levels, the jury may conclude that the defendants' conduct caused injury to each plaintiff. The amount of that injury may be computed at a separate trial on the damage issues. Cf. Aamco Automatic Transmissions, Inc. v. Tayloe, Civ. No. 73-391 (E.D. Pa. Apr. 18, 1975), at 14. From the excerpts of transcripts provided me by the plaintiffs, it appears that Judge McGarr has adopted a similar position in the Automobile Fleet Discount Cases, M.D.L. No. 65 (N.D. Ill.), as did Judge Sirica in the Ampicillin Antitrust Litigation, 55 F.R.D. 269, 275-76 (D. D.C. 1972).

4/ Fed.R.Civ.P. 23(a)(3) requires that the claims of the representative parties be "typical" of the class. However, this requirement adds nothing to the other requirements of rule 23(a). See Ungar v. Dunkin' Donuts of America, Inc., 1975 Trade Cases ¶ 60,204 (E.D. Pa. 1975), at 65,781; 3B J. Moore, Federal Practice ¶ 23.06-2 (Rel. No. 8) and cases cited therein. Thus such facts as that some of the representative plaintiffs are located in eastern cities while members of the class are located in the plains states are irrelevant if they do not have significance under one of the other clauses of rule 23.

of the various states seeking class certification that they are proper representatives of their political subdivisions and agencies,[5/] with the exception that they reraise the "pass-on" defense. I have earlier explicated and rejected this defense as applied to most of the issues here presented[6/] see In re Master Key Antitrust Litigation, M.D.L. No. 45 (D. Conn. Aug. 22, 1973), and I adhere to that ruling here.

It is the two national class actions to which the defendants address most of their objections.[7/] They argue that the City of Philadelphia, which seeks to represent all otherwise-unrepresented public entities who are ultimate purchasers of master key systems, bought a lower percentage of master key extensions than a number of other public entities. They also object to Philadelphia, a populous eastern city, representing sparsely settled plains states, inter alia. I do not find these distinctions compelling, at least to the extent that they are addressed to the liability issues in that case. Philadelphia, having purchased some master key

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5/ See, e.g., Illinois v. Harper & Row Publishers, Inc., 301 F. Supp. 484 (N.D. Ill. 1969).

6/ To the extent that the plaintiffs' contractors, who built the structures incorporating the master key systems, can be shown to have absorbed any of the amount by which the defendants' prices exceeded the price level that would have existed absent illegal conduct, the plaintiffs' damages may be reduced.

7/ The purported class action brought by Bermar Construction Corp. has been conditionally dismissed by order of the court and will not be considered further.

extensions, surely has standing to press a claim as to overcharges on such products. And the lower percentage creates no conflict of interest between Philadelphia and the class it seeks to represent. All share an interest in proving that the defendants conspired to stabilize prices at a supracompetitive level. Similarly, the geographic differences are not compelling, for what is at issue is the existence of a national conspiracy, as effective in Wyoming as in Philadelphia.[7A/]

The defendants' objections to Amherst Leasing as the representative party for a national class of private builder-owners are also unconvincing. The fact, offered as an objection by the defendants, that Amherst Leasing bought mostly locksets for high-rise buildings seems totally insignificant; there is no indication that the alleged conspiracy operated differently with respect to master key systems for high-rise buildings than with respect to systems for other sorts of buildings. Nor are the particular buying practices of Amherst Leasing relevant to the existence of this conspiracy; if they are relevant at all, it is only as to the damages recoverable.

The defendants also object to Amherst Leasing's representation of this large class because of speculation that it will not be willing to bear the cost of the notice to the class required by Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). In an earlier ruling I held that Samuel Lefrak, the head of Amherst Leasing's parent organization, could be deposed

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7A/ The City will, of course, be required to provide notice of this action to all reasonably ascertainable members of the class. Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). If any of those noticed have any reservations about the adequacy of representation by the City of Philadelphia, they need not remain part of the class.

as to its ability and willingness to absorb the costs of representation in this suit, see Amherst Leasing Corp. v. Emhart Corp., 65 F.R.D. 121 (D. Conn. 1974), and that deposition has now taken place. It may be that the defendants will be able to show that Lefrak is unwilling for Amherst Leasing to bear such a burden; they have requested leave to file a supplementary brief on this issue once they have the transcript of Lefrak's deposition. Absent that event, however, I am willing to notice that this plaintiff is a large company that is capable to representing the class if it wishes to, and that it has done so capably until now. Therefore I reject the defendants' objections, giving them leave to renew the class certification issue as to Amherst Leasing if Mr. Lefrak's deposition provides grounds to do so.

Rule 23(b)(3) requires that for a case to be maintained as a class action the court must find that litigation in any other posture would not be superior. The issue most relevant to superiority of the class actions here is manageability;[8/] the defendants say that this litigation is simply not

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8/ Rule 23(b)(3) makes several matters pertinent to a finding of superiority which are not really in issue here: the interest of members of the class in individually controlling the litigation and the extent and nature of other suits concerning this subject matter already commenced. As to the advantage of concentrating the litigation in this forum, I find Judge Napoli's opinion on the issue of whether to transfer several of these cases to this district persuasive. See Connecticut v. Eaton, Towne & Yale, Inc., No. 70 C 591 (N.D. Ill. Nov. 10, 1970). He found compelling advantages in keeping the several cases with which he was dealing together, transferring them all here. I agree that this litigation should be disposed of as a whole rather than in bits and pieces.

manageable. Their argument is largely based upon the position, rejected in note 3 supra, that a particularized showing of some damage to each plaintiff is an integral part of the liability issue. I will not repeat the refutation of that position here. I see no insurmountable management problems with these cases, a conclusion supported by the smooth conduct of the extensive and complex pretrial proceedings to date. Cf. Automobile Fleet Discount Cases, M.D.L. No. 65 (N.D. Ill. Feb. 28, 1975). Nor do I find that any other method of proceeding in this litigation would be superior to maintenance of these class actions.

Thus I adhere to Judge Wood's earlier certification of these classes, denying the defendant's motion and granting the outstanding plaintiff motions for class certification. An important proviso to this ruling, however, is that it is based almost entirely on considerations relevant to the liability, not the damage, issues in these cases. Decertification or certification of different classes remains possible for purposes of whatever damage determination may be called for at a later date.

II. Consolidation of Cases and Separation of Issues

Rule 42(a) provides that this court may consolidate all cases before it involving a common question of fact or law. In order to get all these cases before this court for all purposes, the plaintiffs have moved to have those cases still

on the dockets of other districts transferred here.[9/] As the multidistrict transferee court, I have the authority to rul on such a motion. See, e.g., Pfizer, Inc. v. Lord, 447 F.2d 122 (2d Cir. 1971); Rule 15(b), Rules of Procedure of the Judicial Panel on Multidistrict Litigation. Under 28 U.S.C § 1404(a) (1970) these cases may be transferred here if they might have been brought in this district originally. As al of the defendants have admitted being present in Connecticut this requirement is satisfied. See 15 U.S.C. § 15 (1970). The other prerequisite to transfer is that it be in the interest of justice and for the convenience of parties and witnesses. In one of the suits already in this district fo all purposes pursuant to a § 1404(a) transfer, it was the defendants who sought the transfer with just such considera tions in mind. Judge Napoli ruled that justice would be se ed by a transfer, Connecticut v. Eaton, Towne & Yale, Inc., No. 70 C 591 (N.D. Ill. Nov. 10, 1970). I agree. Therefore al cases not presently in this district for all purposes, except those brought by the State of Florida and the City of New York, are ordered transferred here. Because the cases invo e common issues of law and fact, they are also ordered to be consolidated under Fed.R.Civ.P. 42(a).

9/ The State of Florida and the City of Ne York have not joined in this motion. If they choose no to present such motions their cases must be remanded to the districts from whence t y came at the conclusion of pretrial proceedings.

The remaining issue is posed by the plaintiffs' request, pursuant to Fed.R.Civ.P. 42(b), to conduct separate trials of the liability and damage stages of these consolidated cases. This is a common tool for dealing with complex litigation such as this. See, e.g., PLI, Class Actions 1975, at 53-55 (Litigation Course Handbook Series No. 71) and cases cited therein. And, as I have indicated above, the idea seems to be a good one for these cases as well. The proof that will be introduced as to the liability issues is in large part common to all the plaintiffs. The proof as to damages is likely to be much more individualized. Indeed, the damage component of this litigation, if we must reach it, may be easily resolved only by reference to a special master or through a long series of separate minitrials, one for each plaintiff. Thus, it seems eminently sensible to postpone both further discovery and trial of the damage claims until it is ascertained that the defendants will be liable for some amount.[10/]

The defendants' major objection to this course of action rests on their argument that a particularized showing of damage to each plaintiff must be an element of the liability trial. If this position were accepted, separate trials as requested by the plaintiffs would simply involve duplicative

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10/ It also seems sensible to postpone determining the exact procedure that will be followed at the damage stage until it is certain that there will be such a stage and until enough discovery as to damages has been had that the parties are better able to inform the court of the best procedure to follow.

introduction of damage evidence in each and would accomplish nothing. However, I have not accepted the premise of this argument. See note 3 supra. Therefore I remain convinced that separate trials will be more efficient than a single trial of both liability and damage issues.

The defendants' other objection to splitting the liability trial from the damage determination is that this procedure will preclude the use of the same jury for both stages, in violation of the seventh amendment to the Constitution. Cf. United Air Lines, Inc. v. Wiener, 286 F.2d 302 (9th Cir.), cert. denied, 366 U.S. 924 (1961). The constitutional question turns on whether "the issue to be [tried to a second jury] is so distinct and separable from the others that a trial of it alone may be had without injustice." Gasoline Prods. Co. v. Champlin Refining Co., 283 U.S. 494, 500 (1931). Here the distinctness of the damage issue seems clear. At the liability stage it will be determined whether the defendants' conduct included violations of the antitrust laws and whether it affected prices. The proof of the alleged conspiracy and of liability to the plaintiffs will be possible without detailed reference to damages, as set out in note 3 supra. Similarly, proof of damages suffered will be possible without detailed reference to liability issues: the issues at this stage will be what the plaintiffs paid for their mastery systems and what they would have paid if the defendants had refrained from specific conduct earlier found to be illegal.

Thus I find the defendants' constitutional objections unpersuasive and order that separate trials be held on the issues of liability and damages. Cf. Terrell v. Household Goods Carriers' Bureau, 494 F.2d 16 (5th Cir. 1974); Swofford v. B & W, Inc., 336 F.2d 406, 415 (5th Cir. 1964), cert. denied, 379 U.S. 962 (1965); LoCicero v. Humble Oil & Refining Co., 52 F.R.D. 28 (E.D. La. 1971). It is

SO ORDERED.

Dated at Hartford, Connecticut, this 27th day of May, 1975.

M. Joseph Blumenfeld
United States District Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

M.D.L. DOCKET NO. 48

IN RE:	
MASTER KEY ANTITRUST LITIGATION	ALL CASES

DEFENDANTS' MEMORANDUM ON NOTICE TO THE CLASS MEMBERS

Rule 23, Federal Rules of Civil Procedure, provides [Rule 23(c)(2)]:

> "In any class action maintained under Subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

This court directed counsel for plaintiffs and defendants to confer on the form of notice to be sent to the classes declared. This conference has taken place but there are significant differences concerning the form of notice. Efforts of counsel to reconcile these differences have proven unsuccessful and both sides have submitted proposals to the court.

The essential difference between the two forms of notice is that defendants propose to append to the notice a short statement of claim form. The statement of claim

form would establish promptly which class members intend to pursue claims and would ascertain the amount and source of their direct or indirect purchases of builders hardware from defendants.

Claim forms similar to that proposed by defendants herein have been ordered by courts in numerous antitrust and other class actions. Quite recently, Judge Green in the bread cases, City of Akron v. Laub Baking Company, Civ. No. 70-853, Northern District of Ohio, approved substantially the same form submitted here. There, plaintiffs' co-liaison counsel, Laddie Montague, is attorney for plaintiffs and agreed to the utilization of the proof of claim form.

Questionnaires to all local governmental units have been circulated in these cases by plaintiff--states. For example, Minnesota has required all its political subdivisions to complete and return a proof of claim for all "building construction projects constructed for you during 1950 and for each year thereafter to date." See page 1 of letter from Warren R. Spannaus, Attorney General, State of Minnesota, attached hereto as Exhibit A.

Plaintiffs themselves acknowledge the significance of this information and are requiring class members to submit the information called for by the proof of claim form. Since plaintiffs are already gathering much of the information called for, it is apparent that the advantages of utilizing the proof of claim form may be achieved without creating any undue burden on class members.

Although plaintiffs in this case have declined to agree to t[illegible] of proof of claim forms, it is evident from their

attempts to acquire the information sought that plaintiffs themselves view the information as essential. Nothing but delay can be gained from denying to all parties the information which the proof of claim forms would provide. The proof of claim form will facilitate the management of this litigation by identifying, within a reasonable period of time, the precise number of class members who intend to remain in the action and the amounts of their claims.

The proof of claim form proposed by the defendants is provided for by the express language of Federal Rule 23 and cases interpreting the rule, as a means of promoting the fair and efficient handling of class actions. Rule 23(d) reads in part as follows:

> In the conduct of actions to which this rule applies, the court may make appropriate orders: ...(2) requiring for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors...

Courts have utilized the proof of claim device most effectively in actions such as the present cases where there are numerous class members consisting of governmental entities or large private claimants. The advantages and fairness of the form of notice urged by defendants are apparent. Where the plaintiffs are governmental entities or private builder-owners with considerable experience in antitrust class actions, it is obvious that use of a proof of claim form will neither deter nor discourage the filing of claims by those class members who intend to participate in the action.

A major advantage of requiring submission of proof of claim forms is a prompt determination of the parameters of the class and the amount of claims. It has been the experience of counsel in the bread cases, City of Akron v. Laub, supra, that the information provided by the proof of claim forms greatly facilitated discussion of the cases by the court and counsel.

The information obtained from defendants' form of notice would be particularly useful in the present case where plaintiffs have been allowed to defer their answers to many of the interrogatories directed to them by defendants, or have responded with a pretrial brief entitled "Plaintiffs' Designation of Evidence With Respect to Trial of Liability Issues". The limitations placed on defendants' discovery have created a near vacuum of information concerning even the most basic facts needed to properly appraise this law suit. As a result, defendants still do not have even a rough estimate of the amount of damages plaintiffs claim.

The advantages of identifying the class members who desire to submit claims, determining the amount of their claims, and defining the boundaries of the class have been cited by many courts approving and requiring submission of proof of claim forms. As the court stated in Philadelphia Electric Company v. Anaconda American Brass Company, 43 F.R.D. 452 (E.D. Pa. 1968):

> The permissive-joinder approach under the former rule did have the advantage of making it possible, by establishing a cut-off date for interventions, to learn the likely dimensions of the litigation. But the disadvantages included limited protection against further litigation, and the (arguably) somewhat greater opportunity for claim-soliciting. I believe the advantages can be retained under the present rule. I see no reason why those class-members who do not elect exclusion from the class may not be required to take some kind of minimal affirmative action as a condition of ultimate recovery. 43 F.R.D. at 459.

The classes in Philadelphia Electric, similar to those in the present cases, were governmental entities that had purchased the relevant products (brass pipe, copper pipe, copper tubing and condenser tubing) and a class of private builder members of the National Home Builders Association.

The holding of the Philadelphia Electric court that class members not filing a proof of claim by the specified date be excluded and barred from submitting a claim has been followed in similar cases. Antibiotic Antitrust Actions, 333 F.Supp. 274 (S.D.N.Y. 1971), Harris v. Jones, 41 F.R.D. 70 (D. Utah 1966); Minnesota v. United States Steel Corporation, 44 F.R.D. 559 (D. Minn. 1968); Iowa v. Union Asphalt & Roadoils, Inc., 281 F.Supp. (S.D. Iowa 1968); Lamb v. United Security Life Company, CCH Fed. Sec. Law Rep. §93,489 (S.D. Iowa 1972).

The form defendants propose herein is very similar to the form approved by Judge Lord in the Antibiotic cases, supra, 333 F.Supp. at 207. The information sought from the class members who intend to present claims is the supplier and amount of annual purchases of finish hardware manufactured by defendants. To simplify completion of the statement of claim forms, two separate forms are attached to the notice. One statement pertains to any direct purchases of hardware from the defendants and one statement pertains to indirect purchases.

The proof of claim form proposed by defendants is considerably less extensive and will require much less effort by claimants than the form approved in Minnesota v. United States Steel Corporation, supra. There, the court required a verified proof of claim form including the following:

> ...name of the claimant, the appropriate or knowledgeable government official familiar with the details, the gross amount of purchases and dates thereof for which claim is made, the person or firm from or through whom bought or general contractor dealt with, type of building or structure into which the steel was incorporated or other end use made of the product and any other matters deemed appropriate. Attached to or accompanying the proof of claim form should be a certified resolution of the governing body authorizing the submission of the claim. 44 F.R.D. at 577.

The facts in Minnesota v. United States Steel Corporation are very similar to the present cases. Treble damage antitrust suits were brought by eight governmental entities against six steel companies. The court correctly noted that each plaintiff would have to prove a precise purchase or purchases to show damages. In requiring the use of a proof of claim form, the court also noted that courts had determined the form to be of greater practical value where there are numerous class members.

Employing similar reasoning, the court in Philadelphia Electric Co. v. Anaconda American Brass Co., supra, enumerated the elements of plaintiffs' case as follows:

> In order to succeed in this action, plaintiffs will have to prove (1) that there was a conspiracy to fix prices in violation of the antitrust laws; (2) that prices were fixed pursuant thereto; and (3) that plaintiffs purchased products at prices which, as a result of the conspiracy, were higher than they should have been. 43 F.R.D. 457.

Plaintiffs must show impact and at least an initial purchase and resultant damage as a part of their liability case. Evidencing purchases by use of the statement of claim forms will facilitate this proof, an essential element in any trial of liability issues in these cases.

In Harris v. Jones, supra, a §10(b)-5 securities action, the court found that where the operative facts differ with

respect to different class members, efficient handling of the case requires a means of identifying prior to trial those class members who wish to file claims. The information called for by the proof of claim must be made available by plaintiffs to defendants at some point. Since plaintiffs are already assembling, or have assembled the data, there is no reason to delay defendants' access to this information, which will facilitate greatly the conduct and efficiency of this litigation.

In Harris, the factual distinctions among claimants concerned securities purchased at different times and under varying circumstances, as well as differences in the type of, and reliance on, misrepresentations. Similar significant factual distinctions exist in the present cases, where the purchasing, sales, and marketing practices differ widely among the parties.

Basic to antitrust law is the principle that plaintiffs must prove as an element of their liability case at least the initial fact and impact of damage. Even if violation of the antitrust laws be established, there can be no liability without proof of an injury directly traceable to the violation. See the extensive citation and discussion of authorities in "Defendants' Memorandum In Opposition To Plaintiffs' Rule 42 Motion" filed January 3, 1975. Thus the policies and procedures of both plaintiffs and defendants, and information concerning plaintiffs' purchases from defendants, are highly relevant and essential to a trial of the liability issues in this case.

The purpose of Civil Rule 23 is to ensure fairness to all parties, promote the efficient handling of complex

litigation, and to give courts the flexibility and the procedural tools required to generally advance the cause of justice. Courts in requiring that proof of claim forms be submitted have noted these goals and the manner in which the proof of claim form facilitates reaching these goals.

In Arey v. Providence, 55 F.R.D. 62 (D.D.C. 1972), the court stated:

> One of the primary purposes for the 1966 amendments to Rule 23 was to allow the court more leeway to continually shape the parameters of the class and even to periodically determine whether the class should continue to exist at all, in an effort to ensure procedural fairness and to allow the court proper opportunity to periodically consider practical aspects of the litigation that might arise. 55 F.R.D. at 70.

The court found that a proof of claim form requiring class members to set forth their allegations would comply with the requirements of Rule 23 by providing information as to the scope of the class and the scope and diversity of the discrimination claims at issue. The court further noted that the precedent for obtaining information from non-present class members concerning the circumstances under which their claims arose and the amounts of their claims was well established in antitrust and stockholder class suits.

The court in the Philadelphia Electric case, supra, noted that a goal in cases such as the present one is to make known in advance which claimants and potential claimants can be expected to be bound by any judgment rendered in their favor. Since passive members of the class are bound by the judgment, it is in the interest of efficient litigation and to the advantage of all concerned to know as soon as possible which class members have no intention of attempting to prove individual damages, thus revealing the true scope of the litigation, reducing the trouble and

expense of any subsequent notice and providing a basis for an informed reappraisal of the class action when appropriate. 43 F.R.D. at 459.

In adopting a claim form in Iowa v. Union Asphalt & Roadoils, Inc., supra, the court determined that it would preserve the right of class members to elect not to be bound by the judgment and would also retain the advantage of an early determination as to which parties intended to offer proof of damages if liability was established. The court found use of the proof of claim form fully consistent with the broad discretion given the courts by Rule 23 in determining the form of notice.

The courts found in the cases cited that the administration of complex litigation is greatly facilitated by the use of proof of claim forms. The information to be furnished must eventually be provided by the claimants and it is in the interests of all concerned to have this information as soon as practicable. The information enables intelligent analysis of the scope and dimensions of the case, reappraisal of the class action determination, and assists the court and counsel in trial preparation and management.

Some courts have directed an initial notice to the class, only to determine later that a second notice to the class members is necessary to obtain the information contained in the proof of claim form. See Harris v. Jones, supra. Such shortsightedness is obviously not an efficient and economical use of the resources of the court and parties. Rather than repeating the process of notice, it is better to anticipate the information that will be needed and to obtain all such information at one time.

Failure to provide the information required by the proof of claim form, within a reasonable period of time after the mailing of notice to members of the classes, should result in the claims of non-complying class members being barred. Philadelphia Electric Co. v. Anaconda American Brass Company, supra; Harris v. Jones, supra; Minnesota v. United States Steel, supra.

There is ample precedent for defendants' form of notice.

Plaintiffs certainly acknowledge the importance and significance of the information called for by the proof of claim form---information which plaintiffs have already elicited from class members.

For the compelling reasons fully delineated in the cases discussed above, defendants' form of notice should be ordered herein.

Respectfully submitted,

EATON CORPORATION
ILCO CORP.
SARGENT & COMPANY

By_____

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S E R V I C E

I, Walter A. Bates, do hereby certify that on this _____ day of July, 1975, I have mailed a copy of the foregoing to counsel on the attached service list of counsel pursuant to Rule 6 of the Rules of Procedure of this court.

Walter A. Bates

1 Copy

RECEIVED
JUN 9 1975
L. F. O.

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT North Hennepin Community College

DATE May 8, 1975

MAY 12 1975

TO : Glewwe Metals

FROM : Raymond C. Williams
Plant Operations Superintendent

SUBJECT: Master Key Antitrust Litigation

Please complete the attached forms and return as soon as possible to:

Raymond C. Williams
North Hennepin Community College
7411 85th Avenue North
Brooklyn Park, MN 55445

EXHIBIT "A"

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STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

April 9, 1975

APR 14 1975

MAY 12 1975

Re: Master Key Antitrust Litigation

Gentlemen:

On behalf of the State of Minnesota and all its political subdivisions I have commenced an antitrust action against four nationwide manufacturers of master key systems. A master key system is a lock and key system designed specifically for a particular building or complex of buildings in accordance with a plan for limiting access to specified areas. An example of a master key system commonly used in public buildings is one which allows locks to be opened by a master key (such as one carried by a janitor or guard) and also by other keys which give access only to single locks.

The manufacturers that are defendants in this action are:

EATON YALE & TOWNE, INC.
EMHART CORPORATION (selling under brand names
"Russwin" and "Corbin")
KIDDE CORPORATION (selling under the brand name "Lockwood")
SARGENT & COMPANY

As a result of the practices complained of in our lawsuit, it appears that bids or quotes to supply contract hardware for state agencies, school districts, and other political subdivisions within the State of Minnesota may have been in excess of competitive prices.

Your cooperation is needed in compiling information about your building construction projects (government buildings, hospitals, nursing homes, dormitories, etc.), both for new facilities and additions to existing facilities, during the period January 1, 1950, to date. We request that the appropriate responsible officer compile a list of substantial ($50,000 and over) building construction projects constructed for you during 1950 and each year thereafter to date. For each construction project fill out the form enclosed herewith. You should xerox the form if more than one construction project is involved.

BEST COPY AVAILABLE

Also, please supply us with information on the same form relative to any purchases of master key systems other than in conjunction with a building project--such as a key system purchased to replace an existing system. Again, for each purchase fill out a separate form.

In addition to completing the form(s), please send us all documents that relate to such construction projects or to purchases of contract hardware from distributors or contractors, including all correspondence with architects, contractors, distributors, dealers or manufacturers. The information as to the price paid for contract (or "finish") hardware will likely be contained in the general contractor's bid or pay-out affidavit. It is most important that we have all your documents, regardless of whether the company which furnished the contract hardware was one of the defendants or some local dealer.

Please collect the information and all documents available, in whatever office or offices located, and send these materials to:

Minnesota Master Key Survey
Attention: Lee A. Freeman, Jr., Esq.
Freeman, Freeman & Salzman
Suite 3200, One IBM Plaza
Chicago, Illinois 60611
Telephone: (312) 467-6540

Send the completed forms to Mr. Freeman at this address rather than to my office in St. Paul. If your records are not complete, please advise. PLEASE SEND US THE REQUESTED INFORMATION AND DOCUMENTS BY May 15, 1975.

We will make our analysis of the documents submitted, and return them to you at your request or as soon as our analysis is completed. If you object to sending the originals (which we greatly prefer), then prepare xerox copies and transmit those. In the event that you send xerox copies retain the originals and be sure to take steps to arrest any of your customary document destruction procedures which might result in their loss.

If you have any questions, please telephone or write Mr. Freeman, whose address and telephone number appear above, or Patricia Nolte, Investigator, Attorney General's Office, 160 State Office Building, St. Paul, Minnesota 55155 (telephone: (612) [illegible]-2961). Your cooperation is essential to our efforts to analyze competitive conditions in the sale of these products to Minnesota public institutions. Thank you very much for your efforts.

Sincerely yours,

Warren R. Spannaus

WARREN R. SPANNAUS
Attorney General

WRS:cl

Please attach all documents relating to the purchase of contract hardware, including:

(1) Specifications for hardware;
(2) Tabulation of competitive bids received from contractors or hardware suppliers;
(3) Chart for master key settings;
(4) Schedule of hardware installed;
(5) Correspondence with contractor and hardware supplier or manufacturer; and
(6) Contractor's affidavit.

If you do not have these documents, please state the name and address of the person or agency who has custody of these materials.

Form completed by:

Name_____

Title_____

Address_____

Date_____

Please return this form to:

Minnesota Master Key Survey
Attention: Lee A. Freeman, Jr., Esq.
Freeman, Freeman & Salzman
Suite 3200
One IBM Plaza
Chicago, Illinois 60611

Telephone: (312) 467-6540

MINNESOTA MASTER KEY SURVEY

TABULATION OF CONTRACT HARDWARE
INSTALLED ON INDIVIDUAL CONSTRUCTION PROJECT

Public Agency

Name _____

Address _____

Project using Master Key Locksets

Name NORTH HENNEPIN COMMUNITY COLLEGE

Nature PHASE IV

Location BROOKLYN PARK, MINN.

Your File or Reference Number _____

Dates of construction from _____ to _____

Supervising Architect or Engineer

Name _____

Address _____

General Contractor

Name W. TERR. COAST CO

Address 900 SECOND AVE SO.

Total amount of general contract $ _____

Amount of finish hardware 8,915.00

Hardware Supplier or Subcontractor

Name GLENNE METALS INC.

Address 6284 CLAUDE WAY EAST.

Total amount actually paid $ AS OF THIS DATE 5/15 (7,955.65)

Brand name and manufacturer of locksets installed

YALE — EATON

Relation to Pre-Existing Facilities

Was the project an expansion of an existing building or complex of buildings? YES

If so, state brand name and manufacturer of locksets used in the original building(s):

YALE — EATON

(over)

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BWF:ad:d:ad 8/8/75 (1)

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

M.D.L. DOCKET NO. 45

IN RE:	ALL CASES
MASTER KEY ANTITRUST LITIGATION	ORAL HEARING REQUESTED

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PROPOSED SETTLEMENT NOTICE

Liaison counsel for plaintiffs, and counsel for defendant Emhart Corporation, which has proposed a settlement to the plaintiffs, have jointly submitted a form of notice to be sent to all plaintiff class members which would combine the notice of pendency of class action required by Rule 23(c)(2) with the settlement notice required by Rule 23(e). The non-settling defendants find such a proposal profoundly objectionable, not only because of the prejudicial effect it would have upon their interests, but because of the inefficiency and confusion in which it would mire both the court and absent class members.

Under Rule 23 the court has the duty to analyze and evaluate the fairness of any settlement to insure that the proposal is "fair and reasonable and in the best interest of all who will be affected by it". Wright and Miller, Federal Practice and Procedure §1797. (Emphasis added throughout.) Ancillary to that duty, the court has an obligation to

scrutinize notice of a proposed settlement to avoid any prejudicial consequences that inadequate, misleading or confusing communications could have upon interested parties. While cases generally state that this obligation is founded upon a desire to protect the interests of "non-represented class members", it is only the absence of other interested parties which has limited their language. Where, as here, there are non-settling defendants who also have legitimate concerns with settlement procedures, the court's scrutiny must encompass those concerns.

In light of the objections here raised by non-settling defendants, the court should reject the method of notice that has been proposed and substitute therefor a pendency of class action notice accompanied by a simple proof-of-claim form and a subsequent notice of settlement that is more concise, more accurate and considerably more informative than the one currently suggested by plaintiffs.

I. THE CLASS ACTION NOTICE SHOULD BE ISSUED PRIOR TO ANY SETTLEMENT NOTICE.

The Manual for Complex Litigation assumes that the class action notice will be issued prior to any settlement notice:

> The notice of the proposed settlement should be given in the same manner as that previously used in giving notice of the class action unless a more effective notice procedure is available as a result of information obtained in the interim. (§1.46)

There are sound reasons for such procedure. The authors of the Manual were distressed with the trend toward establishing "tentative classes" for the purpose of pursuing settlements:

> Another aspect of settlement of class actions which requires examination is the growing practice of forming tentative classes for the purpose of settlement. Such classes have been formed with court approved provisions for notice to members of the class informing them that they shall accept the settlement or opt out and be required or permitted to litigate their claims for relief. There is, to say the least, serious doubt that this practice is authorized by Rule 23 as amended, even if it is conceded that the courts are expected to develop new methods of employing the amended Rule 23.
>
> Consideration of this practice in view of the provisions of Rule 23 and experience to date leads to the conclusion that tentative classes for the purpose of settlement, with or without provision that the members should be required or permitted to opt out and litigate their claims for relief, should never be formed. (§1.46)

Classes which have been abstractly certified, but whose members have never received a notice, are virtually tentative classes for the purpose of settlement negotiations and the same weakness the Manual observed in the tentative class procedure is existent in this situation. Among those weaknesses, the Manual stressed the following:

> . . . it will be impossible to determine how many members there are in a class, who they are, the aggregate of claims of all members of the class, the amount of the individual claim of each member in relation to the total claims of all members of the class and therefore, the amount of money which will be payable to each member of the class. This information would seem to be essential to making any rational choice whether to remain in the class and accept the benefits of the settlement or to opt out. (§1.46)

When "class members" who have not previously been notified of the existence of the class action, and who have no information as to the nature and extent of other claims, are suddenly confronted with the decision to accept a settlement or opt out, it is obvious that there is no rational basis for determining whether to participate in the action. This combined notice proposal is in essence a tentative class procedure and the court should reject it as such.

Because there are non-settling defendants remaining in this litigation, the combined notice also has the effect of soliciting claims from parties who would not otherwise pursue claims against the remaining defendants. The Emhart settlement fund is being used as bait to draw in individuals to the detriment of the remaining defendants and plaintiffs should not be allowed to solicit claims in such a manner. As declared in State of Minnesota v. United States Steel Corp., 44 F.R.D. 559 (D. Minn. 1968):

> While the giving of notice pursuant to Rule 23(c) may always arguably create a problem of solicitation by the very nature of the Rule, nevertheless such should be avoided whenever and to the extent possible. (44 F.R.D. at 576)

See, also, 7A Wright & Miller, Federal Practice and Procedure (1972) §1788; Frankel, Some Preliminary Observation Concerning Civil Rule 23, 43 F.R.D. 39 (1967); Philadelphia v. Harper & Row Publishers, Inc., 267 F. Supp. 1001 (D. Pa. 1967).

A settlement notice should only be issued to those who have a right to partake in that settlement. In the agreement now pending, it is not clear whether payment is proposed only for end-users of Emhart hardware (i.e., the Russwin or

Corbin brands) or for all purchasers; yet the proposed settlement notice would go to all potential class members whether or not they were end-users of these products. In fact, the proposed notice would even go to those who purchased nothing, directly or indirectly, from any of the named defendants in this action. In essence, this would be to wave the settlement fund in front of those who have no right to share in it merely to draw them into the lawsuit. The fact that this is merely a solicitation of as many potential plaintiffs as possible is signified by the fact that Emhart has retained an option to withdraw the settlement offer if too few plaintiffs respond.

The use of such combined notice will draw the attention of potential plaintiffs to the settlement fund rather than to the merits of their claims and the issues being litigated. Because of the limited time available before a hearing on the settlement, certain plaintiffs may be seduced into accepting the agreement and releasing Emhart when they might have objected to the proposal or opted out had they been afforded adequate information upon which to evaluate the case. As discussed below, adherence to the procedure urged by the named plaintiffs will not afford absent class members the type of information necessary to make a rational decision.

Finally, despite its superficial appeal, the combined notice would not further judicial efficiency. The notice would draw in many apparent plaintiffs whose spurious or questionable claims were generated by an attempt to secure a slice of the settlement fund waved before them. By telescoping the two issues of class determination and settlement, the court will only postpone and complicate the task of sorting

out the valid claimants and of obtaining the economic data necessary to evaluate the settlement offer.

II. A PROOF-OF-CLAIM FORM SHOULD ACCOMPANY THE CLASS ACTION NOTICE

A proof-of-claim form is an essential prerequisite to any serious evaluation of the settlement offer and the notice which describes it, and such proof-of-claim form should be sent out with the initial class action notice so the information it produces can be incorporated into a subsequent settlement notice which is more enlightening than the wholly inadequate notice urged by plaintiffs.

The Manual for Complex Litigation observes that:

> It is within the otherwise broad discretion granted to the court by Rule 23 to require a timely proof of claim . . . (§1.45)

As stated previously, it is essential for potential class members to know the size of the class and the amount of settlement funds payable to each member before they can rationally determine whether to accept the benefits of a settlement or object to it. This is of particular importance in the present case in view of plaintiffs' efforts to dilute the settlement by "compensating" those who have not made any purchases--direct or indirect--of hardware manufactured by defendants.

Adequate information is similarly required for the court to fulfill its duty of evaluating the fairness of the settlement proposal. Such information can most efficiently be obtained by the use of a proof-of-claim form accompanying the class action notice, requiring claimants to indicate

their purchases of hardware from defendants.

The Manual emphasizes repeatedly the need for reliable and extensive economic data before the court can adequately evaluate a settlement:

> Particularly in civil antitrust actions in which settlements are proposed is the need of the court for reliable economic data great. In the absence of reliable economic data concerning the damage suffered by each class and subclass as a result of the alleged illegal conduct, a rational determination of what is fair and reasonable cannot be made.
>
> * * *
>
> The apportionment of the total proposed settlement among the several classes requires reliable economic data on which a finding of injury and damages to each class can be based.... Only an examination of reliable economic data can provide the information absolutely necessary to the performance of the judicial function in approving or disapproving the settlement in such cases. (§1.46)

The Manual concludes that "the economic data by the time of the final hearing, should be fully developed." Courts have rejected settlements in which they found such data inadequate. See Percodani v. Riker-Maxon Corp., 50 F.R.D. 473 (S.D.N.Y. 1970).

The Manual also recognizes the necessity of obtaining such information prior to the issuance of any settlement notice:

> The notice itself must adequately describe the proposed settlement and should include the best available information concerning fees and expenses which may be deducted from the gross amount, together with an estimated range of the unitary recovery (e.g., amount per share, per unit, per dollar charged, and the like) that members of the class may expect to receive if the settlement is approved. (§1.46)

Such a proof-of-claim form appended to a separate class action notice would be a benefit to all concerned: 1) Emhart would quickly learn the size of the class and the amount of claims involved, and would not have to hedge on its settlement offer with an option to withdraw as it is currently doing; (as it now stands, an enormous amount of time and money could be wasted issuing a settlement notice to potential class members only to have the settlement offer subsequently withdrawn by Emhart); 2) the remaining defendants would have accurate information on the size of the plaintiff classes and nature of claims so that they could more realistically enter into and evaluate subsequent settlement negotiations; 3) the class representatives would have the information necessary to produce a truly informative settlement notice which, in turn, would give the absent class members the data necessary to make a rational decision; and 4) the court would have the information required to competently analyze the adequacy of the "distribution plan" not yet filed and now so vaguely characterized as a plan that "will be based upon statistics" not yet forthcoming.[1] The competent scrutiny of such distribution plans by the court has been held a standard by which to judge the fairness of proposed settlements. Hartford Hospital v. Chas. Pfizer & Co., 52 F.R.D. 131 (S.D.N.Y. 1970).

Ample authority supporting the use of proof of claim forms has previously been presented and the Court's attention is particularly directed to Defendants' Memorandum On Notice to the Class Members filed with this Court on July 2, 1975

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[1] See page 5 of the proposed notice.

and to the Reply Memorandum in Support of Defendants' Form of Notice of Pendency to the Class Members filed on July 15, 1975.

III. THERE ARE ADDITIONAL DEFICIENCES IN THE PARTICULAR NOTICE FORM PROPOSED.

In addition to the major criticisms previously discussed, there are particular objections to the text that has been submitted by plaintiffs:

1) In subsection A, The Litigation, the notice states that:

> The Complaints allege that since at least 1950 defendants have violated the Federal anti-trust laws. . .

This is an erroneous statement of fact and, as such, should be corrected or eliminated.

2) In Section B, Defendants, the notice states that:

> It is not necessary for you to have purchased contract hardware manufactured by one of the defendants, nor need you have purchased directly from the manufacturer, to participate in this litigation.

The non-settling defendants vigorously object to this language. Not only are the plaintiffs seeking to solicit claims from those who may be ineligible to participate in the settlement offer, but they are soliciting claims from parties beyond the defined limits of classes. The classes as certified only include governmental entities "who have purchased locks with Master Key Systems from one or more of the defendants" and builder-owners "who have purchased locks of Master Key Systems manufactured by one or more of the defendants". See

Opinion and Order of Judge Wood issued June 23, 1970 which was adhered to by this court in its ruling of May 22, 1975.

Preliminary studies indicate that the named defendants' share of the total market for builders hardware during the relevant period was less than ten percent.[2] Nevertheless, the plaintiffs seek to posture all purchasers in the remaining ninety percent of the market as potential plaintiffs.

4) The discussion of attorneys' fees is extremely vague and should be set out in a separate section which, at a minimum, identifies the attorneys involved and the actual amount they would be receiving under the proposed settlement.

5) As stated previously, this notice could be a vast waste of time if Emhart exercises its withdrawal option because too few parties were solicited. This hazard would be minimized by issuing the class action notice and proof-of-claim first.

6) The notice should more clearly state that it is merely a general description of the particular settlement agreement and that the settlement agreement should be examined by potential class members before a decision is made.

7) The rights and options of class members who object to the proposed settlement are now hidden in negative implications and they should be more conspicuously set forth with specific instructions on steps one should take to object.

IV. CONCLUSION

For the reasons and authorities herein stated, the issue of settlement notices cannot be rationally discussed

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2 See Census of Manufacturers, 1967 and Annual Survey of Manufacturers, 1965.

or examined until a class action notice is issued and economic data solicited from those members who do not opt out of the class. At that time a settlement notice containing the changes mentioned herein would be in order. The Court could then more easily and fairly proceed with an examination of the settlement agreement, and fulfill the requirement that it ensure that the settlement is fair to all parties affected by it. All class members and settling and non-settling defendants would then have the type of data necessary to exercise judgment and make rational decisions.

The undersigned defendants request a hearing on the issues raised herein to more fully explain to the court their objections to the current proposal and their alternative suggestions for a more fair and expeditious handling of the matters raised by the settlement notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the foregoing MEMORANDUM to be served upon all counsel of record by mailing a copy of same to each of them, this _____ day of August, 1975.

Walter A. Bates

(311)

FILED

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE:	:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	:	ALL CASES

RULING ON MOTION FOR
CERTIFICATION OF INTERLOCUTORY APPEAL

On May 27, 1975, a number of pending motions in this litigation were ruled upon. The plaintiffs were successful in all respects. Two nationwide classes and numerous statewide classes were provisionally certified; all but two of the cases that make up this multidistrict litigation were transferred to this district for all purposes and consolidated; separate trials on the issues of liability and damages were ordered; further discovery as to damages was postponed until completion of the trial of the liability issues.

The remaining defendants,[1] over the objections of the plaintiffs, now seek a modification of the opinion of May 27 to include a certification of two questions for immediate appeal. See 28 U.S.C. § 1292(b):

> "When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question

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1/ Emhart Corp. has entered into a settlement agreement with the plaintiffs that is in the process of being formally executed by all parties.

> of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. . . ." 2/

The appropriateness of this certification procedure for resolving issues of class certification and consolidation has recently been emphasized by the Second Circuit. See Parkinson v. April Industries, Inc., Dkt. Nos. 74-2058, 74-2214 (2d Cir. June 30, 1975), at 4475 & n.5 (majority opinion), 4485 (Friendly, J., concurring). See also Katz v. Realty Equities Corp., Dkt. Nos. 74-2053 to -2054 (2d Cir. June 30, 1975).

The first question that the defendants seek to have certified is whether particularized "impact" must be shown as an element of establishing liability. Cf. 15 U.S.C. § 15. The defendants' argument was rejected in the May 27 ruling, which held that a generalized showing of injury was sufficient. If the defendants are correct, the validity of two conclusions necessary for the class certifications entered--that common issues predominate over individual issues and that trial of the case as a class action would be manageable--would be open to serious question. Cf. Ungar v. Dunkin' Donuts of America, Inc., 1975 Trade Cases ¶ 60,361, at 66,537

2/ Section 1292(b) provides for certification of interlocutory appeals of certain orders "not otherwise appealable." It is somewhat anomalous that the defendants seek such certification, for they have also filed a notice of appeal and thus contend that the ruling is directly appealable.

(E.D. Pa. Apr. 8, 1975). In addition, the utility of separate trials of liability and damage issues would be nil, as explained on pages 10-11 of the ruling of May 27. Thus the defendants' first question is "serious to the conduct of the litigation," Katz v. Carte Blanche Corp., 496 F.2d 747, 755 (3d Cir.), cert. denied, 419 U.S. 885 (1974), and thus may be characterized as "controlling" within the meaning of § 1292(b). Moreover, the split among the courts who have considered this issue, indicated at note 3 of the May 27 ruling, establishes that "there is substantial ground for difference of opinion."[3/]

3/ Since the May 27 ruling the Supreme Court has spoken in a way that seems to support my conclusion. In Goldfarb v. Virginia State Bar, 43 U.S.L.W. 4723, 4727 (U.S. June 16, 1975), a Sherman Act case, the Court considered the particularity of the proof needed to show the jurisdictionally required effect on interstate commerce:

> "The fact that there was no showing that home buyers were discouraged by the challenged activities does not mean that interstate commerce was not affected. Otherwise, the magnitude of the effect would control, and our cases have shown that, once an effect is shown, no specific magnitude need be proved. E.g., United States v. McKesson & Robbins, Inc., 351 U.S. 305, 310 (1956). Nor was it necessary for petitioners to prove that the fee schedule raised fees. Petitioners clearly proved that the fee schedule fixed fees and thus 'deprive[d] purchasers or consumers of the advantages which they derive from free competition.' Apex Hosiery Co. v. Leader, 310 U.S. 469, 500 (1940). See United States v. Socony-Vacuum, 310 U.S. 150 (1940)."

The Supreme Court's logic is similar to that in note 3 of the May 27 opinion. However, the Court was addressing a different issue, and I cannot find its language so closely analogous to

It is the third requirement of § 1292(b)--"that an immediate appeal from the order may materially advance the ultimate termination of the litigation"--that in my opinion is not met here. This litigation is now nearing trial as to the liability issues: plaintiffs' counsel have asked for a trial date this fall. Discovery has been ongoing for years and is at or near the point of completion. The class notices are being readied for mailing this summer. It is within the realm of possibility that a decision may be entered this year.

In the face of such progress it can be merely dilatory to permit an interlocutory appeal. No matter how the Second Circuit might resolve the question raised by the defendants, a trial would have to go forward thereafter. And the vigor with which the parties have contested each point in the litigation to date makes it likely that an appeal would eventually be taken by the losing side. On the other hand, if no appeal is allowed now, one will probably be taken after the trial. If I am reversed on the question raised by the defendants a new trial might be required.[4/] The trade-off,

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3/ cont'd

this litigation as to destroy the "substantial ground for difference of opinion" found here.

At least one more lower court has upheld the defendants' position since my ruling. See San Antonio Tel. Co. v. American Tel. & Tel. Co., No. SA-72-CA-330 (W.D. Tex. June 23, 1975), reported in 721 ATRR, July 8, 1975, at A-16.

4/ Of course, a new trial might result even if the May 27 ruling were correct if some other error were to occur. However, this possibility is not relevant to the present discussion.

then, is one trial and two appeals the defendants' way, or one appeal and one trial if no appeal is allowed now and the May opinion was correct; one appeal and two trials if no appeal is allowed now and the May opinion was wrong. Especially given the proximity of the litigation to trial, I think that the latter road is shorter. Section 1292(b) puts it within my discretion to travel the path to immediate trial.

The second question as to which certification is sought is whether the separation of damage and liability issues for trial violates the defendants' rights under U.S. Const. amend. VII (trial by jury). The first premise of this question is that the split trial procedure will preclude the use of the same jury for both stages; the second premise is that the issues are so interwoven that trials before different juries would be unjust. See Gasoline Prods. Co. v. Champlin Refining Co., 283 U.S. 494, 500 (1931); United Air Lines, Inc. v. Wiener, 286 F.2d 302 (9th Cir.), cert. denied, 366 U.S. 924 (1961). The constitutional argument was rejected in the May 27 ruling.

This question is clearly inappropriate for interlocutory appeal. First, its premise that separate juries will be necessitated is not established.[5/] Thus the Court of Appeals would be asked to resolve a still speculative issue.

5/ In the May 27 ruling this premise was accepted arguendo; the opinion went on to hold that even if separate trials were needed, no infringement of the defendants' constitutional rights would result.

which would be an unwarranted imposition upon its crowded docket. Until the issue becomes fixed, it can hardly be said to be "controlling" within the meaning of § 1292(b). Second, the extent of interrelationship between the issues separated for trial is a peculiarly factual matter. To be sure, the answer to the constitutional question is necessarily "legal"--the application of the law to the facts. However, the basically factual nature of the inquiry militates against certifying this as a "controlling question of law" within the meaning of § 1292(b). Third, it is not clear that a "substantial ground for difference of opinion" exists. The plaintiffs have cited numerous cases using split trials before different juries in various factual circumstances, which tends to establish that the degree of interrelationship between the separated issues must be quite high in order to violate the Constitution. The defendants have come forward with scant precedent to the contrary.

In view of the foregoing, the defendants' motion to certify issues for interlocutory appeal ought to be denied. It is

SO ORDERED.

Dated at Hartford, Connecticut, this 11th day of August, 1975.

M. Joseph Blumenfeld
United States District Judge

BFS:WAB:ad 8/26/75

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

M.D.L. DOCKET NO. 45

IN RE:	
MASTER KEY ANTITRUST LITIGATION	ALL CASES

DEFENDANTS' SUPPLEMENTAL MEMORANDUM
RE: CLASS NOTICE AND CLASS DESIGNATION

I. INTRODUCTION:

Counsel for plaintiffs and for defendant, Emhart Corporation, have proposed a combined class action and settlement notice. The nonsettling defendants (Eaton Corporation, Ilco Corp. and Sargent & Co.) have filed a memorandum opposing plaintiffs' proposal, citing compelling reasons and authority for the utilization of a notice of pendency of class action with attached proof-of-claim form, and subsequent distribution to claimants of a notice of settlement. Defendants have also exposed and vigorously objected to the plaintiffs' attempts to change the membership of the classes and expand them beyond the limits determined by the Court.

Several plaintiffs have filed, subsequent to the submission of defendants' memorandum, their own proposals for the form of notice and their objections to defendants'

suggestions. This supplemental memorandum will respond to the continuing suggestions of plaintiffs.

II. PLAINTIFFS ARE NOW ATTEMPTING TO ENLARGE THE CLASS FAR BEYOND THE LIMITS HERETOFORE ORDERED.

Plaintiffs themselves note that this Court has certified the classes in these cases only after the "issues were hotly contested and the determinations with regard to appropriate classes were based on arguments and evidence presented in litigated context." (See plaintiffs' Reply Memorandum on page 3.) Nevertheless, plaintiffs now seek to unilaterally change the classes certified by order of this Court, and to expand the membership of the classes far beyond any descriptions found in the complaints or other pleadings in this matter, and far beyond the classes as adjudicated by this Court.

In their proposed combined notice for all classes, plaintiffs describe the state-wide governmental classes as "all entities supported in whole or in part by public funds that built structures involving the use of contract hardware." Similarly, plaintiffs propose that the national builder-owner classes be composed of all builders of structures using contract hardware even though the Court certified only a class of builder-owners of hotels, motels, apartments and office buildings.

The classes as plaintiffs propose they be identified in the notice are not the classes ordered by this Court.

Plaintiffs cannot at this late date expect this Court to approve a notice which changes the classes from those defined in plaintiffs' complaints, in dozens of supplemental pleadings and as expressed by Judge Wood and as certified by this Court.

An examination of the pleadings over the five-year history of this case indicates that the national classes have been consistently limited to individuals and entities which have purchased master key systems directly or indirectly from one or more of the named defendants. In the national government class Complaint filed by the City of Philadelphia in February 1970, the class is described as follows:

> The class consists of all state, county, and local governments and governmental authorities and agencies in the United States who have purchased locks with master key systems from one or more of the defendants and/or their co-conspirators [distributors] during the period of the combinations and conspiracies alleged herein. (p. 2)

The national builder/owner class Complaint filed by Amherst Leasing on February 27, 1970 describes the class as follows:

> The class consists of owners and builder-owners of apartments, hotels, motels, and office buildings throughout the United States who have purchased locks with master key systems manufactured by one or more of the defendants and/or their co-conspirators [distributors] during the period of the combination and conspiracies herein alleged. (p. 2)

The majority of the complaints filed by the various other named plaintiffs purport to represent classes described in similar language. (See the list of such states in the Appendix attached.)

Plaintiffs have continuously urged classes be certified consisting of purchasers of locks with master key systems from one or more of the defendants. (See, for example, "Plaintiffs' Brief in Support of Class Actions" and "Plaintiffs' Reply Brief in Support of Class Actions", both filed March 1970.)

Judge Wood tentatively certified a class consistent with plaintiffs' request on June 23, 1970. In his Opinion and Order, Judge Wood stated as follows:

> In its complaint, the City of Philadelphia seeks to maintain a class action on behalf of itself and 'all state, county, and local governmental authorities and agencies in the United States who have purchased locks with Master Key Systems from one or more of the defendants...' . . . In the other action, the plaintiffs are Amherst Leasing Corporation and forty-five other builder-owners of apartment houses and/or office buildings, and they seek to represent a class consisting of 'owners and builder-owners of apartments, hotels, motels and office buildings throughout the United States who have purchased locks of Master Key Systems manufactured by one or more of the defendants.' (pp. 2-3) (Emphasis added)

The plaintiffs, in their Memorandum in Support of All Class Actions filed on January 15, 1973, again referred to these classes as defined by Judge Wood and urged reaffirmance of his order. (See plaintiffs' proposed Class Action Order apperded to that memorandum.)

This Court, in its Ruling on Pending Motions of May 28, 1975, did certify classes as stated by Judge Wood, and in accord with plaintiffs' claims. In the May 28 ruling, it is stated:

Thus, I adhere to Judge Wood's earlier certification of these classes. . . (p. 8)

Having successfully argued that only classes of purchasers of hardware manufactured by defendants ought to be certified, plaintiffs cannot now be heard to contend that the class consists of all purchasers of builders hardware, whether or not manufactured by any defendant and whether or not purchased from any defendant of any co-conspirator-distributor of defendants.

Now, five years after the first complaints have been filed and the initial order concerning class certification was entered, the plaintiffs seek to change and greatly enlarge the scope of the classes. This is but the latest attempt by the plaintiffs to change the nature of this litigation. From a charge of "conspiracy since 1960 regarding the sale of master key systems", they have attempted to stretch this action in three directions - to alter the time frame, to expand to all builders hardware and to expand to all users of hardware, whether or not manufactured by or purchased from the defendants. Plaintiffs cannot now be heard to attempt this late-hour alteration in the face of their long-standing representations to the contrary.

III. PLAINTIFFS' OBJECTIONS TO PROOF-OF-CLAIM FORM ARE NOT WELL FOUNDED AND SHOULD BE DENIED.

In an attempt to rebut the reasons advanced by defendants for the use of a proof-of-claim form, plaintiffs

have distorted defendants' arguments and demonstrated a singular inability to comprehend the objections of defendants to the wholly inadequate notices proposed by the various plaintiffs. Plaintifts represent to the Court that the use of a proof-of-claim form is neither permissible nor advantageous. Both contentions are false.

Contrary to plaintiffs' assertions, defendants are not attempting to use the proof-of-claim form merely for discovery purposes. All parties have engaged in extensive discovery and defendants are in the process of conducting considerable additional discovery, although handicapped by plaintiffs' constant delayed, incomplete and inadequate responses. As emphasized in defendants' memorandum, the information sought by the proof-of-claim form is required:

1) by the Court, if it is to have sufficient information to adquately judge the settlement offer;
2) by the plaintiffs, if they are to draft a truly informative notice of proposed settlement;
3) by the absent class members, if they are to make a rational decision regarding that settlement notice; and
4) by the defendants, if they are to realistically evaluate subsequent settlement negotiations.

(See defendants' Memorandum in Opposition to the Proposed Notice at page 6, supra.)

Plaintiffs claim that the information sought is too complex to be gathered on a simple proof-of-claim form. Plaintiffs' suggestion that the assembling of this vital information be delayed until it is determined whether they can establish liability against one or more of the defendants does nothing more than ensure a lengthy delay between the conclusion of a trial on liability and the commencement of a trial on damages, should that prove necessary. (See plaintiffs' memorandum at page 4.) Whatever the merits of plaintiffs suggested deferral and delay in the normal course, deferral is not a viable alternative where a settlement is pending, for the information provided by the proof-of-claim form is needed to evaluate the fairness of the proposed settlement.

Plaintiffs argue that the information sought is too complex. Any complexity is caused only by plaintiffs' improper attempts to expand the class to parties who have no connection with purchases of defendants' hardware. Obviously, the gathering of data from entities who are not proper members of the class as certified would cause delay and complexity. However, when the class is limited to its proper scope, the information could easily be assembled on the proof-of-claim form previously submitted by defendants.

Despite the arguments and authorities cited by plaintiffs for the proposition that such claim forms must await litigation on liability, the existence of the settlement,

as previously noted, requires the use of such forms as soon as notice of the pendency of the class action is given. Contrary to plaintiffs' assertions, courts have continued to use the proof-of-claim form. Included are Akron v. Laub (Civ. No. 70-853) now pending in the Northern District of Ohio, and Dennis v. Saks & Company, 1975 Trade Cases, §60,396 (S.D.N.Y. 1975), a case upon which plaintiffs mistakenly rely. The damage issue is reached---as here---once a settlement fund has been proposed and, as the cases cited by plaintiffs hold, proof-of-claim forms are required not later than the damage portion of the litigation. Dennis v. Saks & Company, 1975 Trade Cases, §60,396 (S.D.N.Y. 1975). In the present cases, it is essential to obtain this information now.

The plaintiffs have suggested that the amount of the settlement should first be approved as fair, and then they will submit a plan for distribution. (See Reply Memorandum at page 6.) Such a suggestion fails to recognize that crucial to a determination whether the settlement amount is fair are the very distribution plan itself, the nature of the class, and the number and amount of claims. As previously emphasized, the Court must have such extensive economic data to judge the settlement offer and the plan of distribution is a key factor to be examined by the Court. There is no way the Court or class members can competently evaluate a disembodied settlement amount without reference

to the nature and number of claims and the proposed distribution formula.

In addition, the plaintiffs forecast that their future distribution plan will be calculated on statistics which in actuality are irrelevant and wholly inadequate. They assume that they can expand the class to the extent that purchases from the defendants will be irrelevant and, therefore, they can use some other statistical base. As previously discussed, this wild expansion of the class beyond its certified limits is highly improper at this stage or at any stage of the proceedings.

As has been the experience of the Court and counsel in Akron v. Laub, supra., the more complex the case, the more important it is to use efficient and expeditious methods to obtain the data necessary to evaluate proposed settlements. There is no more effective method by which the Court and absent class members can learn the scope of the claims vis-a-vis the size of the settlement offer than through the data that could be generated by a proof-of-claim form. If a proof-of-claim form was utilized in the Akron case, it is all the more economical and efficient to use one in this instance.

As previously stated, the Court has the discretion to issue a proof-of-claim form when it would further judicial efficiency. Such form would be extremely advantageous at

this point in the litigation since a settlement proposal is pending which requires economic data at this time. Plaintiffs' authority for the deferral of a proof-of-claim form involves cases where no such settlement issue was pending. The defendants' original request for the inclusion of such claim form remains not only permissible but highly sensible at this stage of the litigation.

Respectfully submitted,

EATON CORPORATION
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SARGENT & COMPANY

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the foregoing MEMORANDUM to be served upon all counsel of record by mailing a copy of same to each of them, this 26th day of August, 1975.

Walter A. Bates

Walter A. Bates

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

M.D.L. DOCKET NO. 45

IN RE:	
MASTER KEY ANTITRUST LITIGATION	ALL CASES

DEFENDANTS' SECOND SUPPLEMENTAL MEMORANDUM
RE: CLASS NOTICE AND CLASS DESIGNATION

I. INTRODUCTION:

Plaintiffs have submitted a revised notice of the class actions with the letter of liaison counsel to Judge Blumenfeld of January 9, 1976, and have proposed, we understand, that such notice be accompanied in a mailing to class members by a notice of settlement in substantially the form submitted to the court by plaintiffs and Emhart Corporation on July 29, 1975.

The revised class action notice defines three broad classes, the State-wide governmental classes, the national governmental class and the class of private builder-owners. Common to each broad class is the description of the class member as an entity that built structures "having master key systems with contract hardware manufactured by any of the defendants". A master key system has been defined in the plaintiffs' complaints as a "lock and key system designed specifically for a particular building or complex of buildings in accordance with a plan for limiting access to specified areas within such building." Thus for an entity to qualify as a class member it must have built a structure having

a "lock and key system" which has been "manufactured by any of the defendants."

The plaintiffs, we are told, continue to resist mailing to class members any proof of claim form.

It is the purpose of this Memorandum to update the position of the non-settling defendants in light of the revised form of class notice proposed by plaintiffs.

II. THE CLASS NOTICE.

The revised class notice is now acceptable to defendants.

III. THE SETTLEMENT NOTICE.

The settlement notice should, of course, be amended so as to describe members of the classes in a manner consistent with the class notice.

The material on pages 5-7 of the proposed settlement agreement should also be modified to conform to proposals of the non-settling defendants for use of a proof-of-claim form and the development of economic data hereafter described.

With the changes in the settlement notice suggested, these defendants have no objection to its being mailed to class members with the class notice.

IV. PROCEDURE ON SETTLEMENT.

In determining whether a proposed settlement is fair the court must have reliable economic data and, as stressed by the Manual for Complex Litigation, that data should be fully developed well before the fairness hearing.[1] Among such data should be

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[1] These defendants have quoted at length from the applicable provisions of §1.46 of the Manual in their Memorandum in Opposition to Proposed Settlement Notice. Reference should also be made to Defendants' Supplemental Memorandum Re: Class Notice and Class Designation for further elaboration of defendants' position.

information as to the damages alleged to have been suffered by the members of the respective classes. Otherwise, as the Manual points out, there is no reliable method for apportioning the settlement fund or determining if any class or class member has in fact been damaged.

Accordingly, the non-settling defendants propose that there should accompany the settlement notice a proof of claim in substantially the form set forth in defendants' filing of May 28, 1975. This form is identical to that ordered to be used in The Bread Cases by Judge Green (N.D. Ohio). An alternate form of claim is that ordered by Judge William Matthew Byrn, Jr. (N.D. California) in the Gas Vent Pipe Litigation. Attached is the "Statement of Claim" approved by Judge Byrn, together with an adaptation for approval in these cases. Plaintiffs' suggestions to refine or simplify either of these approved forms are invited.

These defendants do not suggest that a proof of claim be a prerequisite to class membership. Thus plaintiffs' objections to an "opt-in" procedure no longer have force. No class member would be asked to "opt-in", but simply to assert a claim against a fund already established.[2]

When the proofs of claim have been assembled and tabulated, it will then be appropriate for the court to notice a hearing on the settlement. Only then can there have been collected sufficient

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[2] Plaintiffs have asserted that "the sales of contract hardware to class members can be identified" from the records of the defendants. (Plaintiffs' Reply to Defendants' Memoranda in Opposition to Proposed Notices of Class Actions and Settlement, p. 5). There is simply no basis in fact for such assertion. Plaintiffs' attorneys have had and continue to have full access to all the master key files and records of these defendants. They have acknowledged that information showing contract hardware sales to class members is nowhere contained in the defendants' records.

reliable economic data for this court to discharge its duty to make an informed judgment on the fairness of the settlement.[3]

Apart from the necessity to have reliable economic data for approval of the proposed settlement, the continuance of the case against the non-settling defendants also makes the suggested claims procedure essential. Without some rational method of identifying each claimant and the amount to be paid each claimant from the settlement fund, it will be impossible properly to credit the settlement payments against any judgment which might be rendered for plaintiffs or any settlement proposed by one or more of the non-settling defendants.

This problem of allocation is, of course, further complicated by the possibilities that a judgment could be in favor of some but not all plaintiffs or that a judgment could be against some but not all of the remaining defendants or that the plaintiffs (or some of them) could be entitled to recovery only for purchases made within a limited period of time.

It is not sufficient in this case to have claims of plaintiff classes or subclasses based on some estimate of capital expenditures by a state, other public body or private builder-owner group. To be a member of one of the designated classes, a claimant, as pointed out above, must have built a structure having a lock and key system manufactured by one of the defendants. There are a number of non-defendant manufacturers of lock and key systems (Schlage and Best being the most significant), so that a structure using a non-defendant's lock and key system would not qualify as a claimant in this litigation. So far as these defendants can

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[3] No provision of the Manual nor any authority we have found requires that the initial notice of settlement set a date for a fairness hearing.

determine there is no way to identify users of defendants' lock and key systems (as distinguished from users of non-defendant's systems) other than to require use of a proof of claim as proposed.

Precisely because of the total lack of economic data, plaintiffs and the non-settling defendants remain far apart in their evaluation of the "exposure" of these cases. At the very least, the proof of claim procedure could provide some realistic basis on which settlement discussions might be undertaken.

These defendants renew their request that the matter of notice be set down for a hearing at which the remaining issues may be fully argued.

Respectfully submitted,

EATON CORPORATION
ILCO CORP.
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Cleveland, Ohio 44115
Attorneys for Defendant Eaton Corporation

Charles Donelan
James E. Wallace, Jr.
Bowditch & Lane
311 Main St., Suite 200-300
Worcester, Mass. 01608
Attorneys for Defendant Ilco Corp.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the foregoing MEMORANDUM to be served upon all counsel of record by mailing a copy of same to each of them, this 26TH day of January, 1976.

John W. Barnett

ATTACHMENT II

Statement of Claim

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA
(This Form Must Be Sworn; See Over)

In Re:

GAS VENT PIPE
LITIGATION,

Plaintiffs.

Civil Nos. 71-949 WMB, 71-950 WMB, 74-221 WMB, 74-1682 WMB, 74-1683 WMB, 74-1695 WMB, 74-1696 WMB, 74-2484 WMB, 74-2691 WMB, 75-213 WMB, 75-373 WMB and 75-C-283

MDL-171

I. ALL CLAIMANTS complete this section:

A. Class of Claimant (See Par. 3 of Notice):

Wholesaler (e.g., Wholesalers, Jobbers, Distributors, Supply Houses, Retailers and Gas Vent Pipe Manufacturers other than Defendants) ☐ (1)

Heating Contractor (e.g. Plumbing Contractors) ☐ (2)

General Contractor ☐ (3)

Owner-Builder ☐ (4)

Direct Use (e.g. Mobile Home and Modular Home Manufacturers) ☐ (5)

B. Claimant Name _____

Present Address _____

City _____ State _____ Zip _____

C. Person to contact for further information regarding this claim:

_____

Name Title (Area code/telephone No.)

II. WHOLESALER CLAIMANTS ONLY, complete this section:

Year	Total Dollar Purchases of Gas Vent Pipe	Gross Sales (All Products and/or Services of Claimant's Business)
1962	$	$
1963	$	$
1964	$	$
1965	$	$
1966	$	$
1967	$	$
1968	$	$
1969	$	$
1970	$	$
Jan. 1 to June 30, 1971	$	$

III. Claimants in the HEATING C[illegible]TRACTOR, GENERAL CONTRACTOR, C[illegible]NER-BUILDER and PURCHASER FOR DIRECT USE BY PURCHASER Classes ONLY, complete this section:

IDENTIFY USE OF GAS VENT PIPE BY SHOWING IN THE SCHEDULE BELOW THE TOTAL NUMBER OF HOUSES, APARTMENTS, OR MOBILE OR MODULAR HOMES BUILT OR MANUFACTURED *USING* GAS VENT PIPE.

IN THE *ALTERNATIVE*, SHOW THE TOTAL DOLLAR PURCHASES OF GAS VENT PIPE. DO NOT DUPLICATE IN COLUMN 4 OR SHOW THE SAME PURCHASES AS REPORTED IN COLUMNS 1, 2, OR 3.

(Attach additional schedules if you do not have enough room below.)

Month and Year	Project or Job Identification*	1. No. of Houses	2. No. of Apartments	3. No of Mobile or Modular Homes	4.** Total Dollar Purchase

*Identify by name and address for each project or job for which you are claiming.

**Claimants should not use this column if information is shown in columns 1, 2, and 3. If the project is other than a house apartment, state the total dollar purchases of Gas Vent Pipe.

SWORN AND NOTARIZED STATEMENT OF CLAIM

I, _____, swear or affirm that the information contained in this
(Name of person signing for claim enclosed)

Claim Form of _____ attached hereto, is true and
(Name of Claimant)

correct to the best of my knowledge and belief; that such Claim Form constitutes the only claim being made by such claimant for recovery on the items indicated on Claim Form; and that the claimant qualifies as a member of the indicated class as defined in the Notice of Class Action and Proposed Settlement, and did not elect to be excluded from such class.

In consideration of the right to receive a share of the Settlement Fund, the undersigned expressly covenants and agrees that the undersigned shall not now or hereafter institute, maintain or assert in any way any claims arising out of the purchase or sale between January 1, 1962 and May 5, 1975 of Type B gas vent pipe or fittings or whatever type of manufacture against any settling defendants which do not withdraw from the settlement, their stockholders, officers, directors, agents and employees, past and present, or against a settling defendant who has exercised its right to withdraw from the settlement for any sale made by the remaining settling defendants provided, however, that the undersigned shall retain all right and claims against all other persons.

I understand that the information contained on the Claim Form attached hereto is subject to such verification as the court may direct, and I agree to cooperate in any such verification.

I understand that a knowingly and materially false statement herein is the felony of perjury under 18 U.S.C. 1621, and that knowingly making a materially false statement to an adjudicatory agency of the United States Government is a felony under 18 U.S.C. 1001, both of which are punishable by imprisonment and fine.

Date: _____

City and State: _____

Subscribed and sworn to before

me this _____ day of _____ 1976.

_____
Signature of person signing for Claimant

_____
Notary Public

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: GAS VENT PIPE LITIGATION, Plaintiffs	CIVIL ACTION NO. 71-949 WMB, 71-960 WMB, 74-221 WMB, 74-1682 WMB, 74-1683 WMB, 74-1695 WMB, 74-1696 WMB, 74-2484 WMB, 74-2691 WMB, 75-213 WMB, 75-373 WMB, and 75-C-823 MDL 171

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT IN CONNECTION WITH GAS VENT PIPE

Pursuant to Rules 23(c)(2), 23(d) and 23(e), Federal Rules of Civil Procedure, YOU ARE HEREBY NOTIFIED:

There are now pending in the United States District Court for the Northern District of California the above-numbered consolidated actions brought by certain direct or indirect purchasers of double-walled, type B gas vent pipe and fittings ("gas vent pipe"). These actions are brought on behalf of various classes of persons and entities tentatively established for purposes of settlement, by Order of the Court dated November 19, 1975. The plaintiffs allege that the defendants engaged in a conspiracy to raise, fix, stabilize and maintain prices in violation of the antitrust laws in the sale of gas vent pipe to plaintiffs and to the members of their alleged classes. The defendants deny the alleged violations, but have agreed to settle all claims by any persons against any or all defendants for alleged violations of the antirtust laws relating to sales made prior to May 5, 1975 of gas vent pipe by any person. You may be a member of one of the classes hereinafter defined and tentatively established by this Court for purposes of settlement. If so, your rights may be affected by the pendency of these actions and the settlement described herein. This notice is not to be understood as an expression of any opinion by this Court as to the merits of any of the claims or defenses asserted by either side in these actions, but is furnished for the sole purpose of informing you of their pendency and of the settlement described herein so that you may make appropriate decisions as to what steps, if any, you may wish to take in relation to these actions and their settlement.

1. **These Actions.** The above-numbered actions allege, in substance, a conspiracy among the defendants and others to raise, fix, stabilize and maintain prices and discounts at which gas vent pipe was sold by the defendant manufacturers. The various complaints, brought in several federal district courts throughout the United States, have been coordinated for pre-trial purposes in the above-entitled proceeding now pending in the United States District Court for the Northern District of California. Each of the complaints allege that each plaintiff and purported class member similarly situated paid higher prices for gas vent pipe than they would have paid in the absence of the alleged conspiracy. The conspiracy is alleged to have begun at least as early as 1956, and its effect is alleged to have continued at least to 1971. Each complaint seeks the recovery of money damages for three times the amount of alleged overcharges on purchases by the plaintiffs and by members of their alleged classes, together with recovery of counsel fees and costs. Some or all of the plaintiffs in each of the actions assert that they represent one of a total of five different classes of purchasers of gas vent pipe as such, or in combination with other products and services, which alleged classes tend to reflect the different levels of purchasers in the distribution chain of gas vent pipe as it moves from the manufacturer and is ultimately incorporated in a home or other structure.

Each defendant has answered the various complaints, denied that any of the plaintiffs represent any class, denied any violation of law, denied any liability whatsoever, continues to deny all allegations of wrongdoing asserted in the complaints, and disclaims any liability with respect thereto. The defendants contend that there was no illegal conspiracy or agreement concerning prices or discounts or gas vent pipe and deny that the plaintiffs or the members of their alleged classes were injured as alleged or entitled to any damages. Defendants maintain that there is no substance to the charges made against them or any of them and that they have valid defenses thereto. The defenses enumerated by defendants include their contention that the claims of plaintiffs and of members of the alleged classes are barred by the applicable statute of limitations.

Defendants also contend that the actions may not properly be maintained as class actions. By order dated November 7, 1972, the motions of plaintiffs in actions No. C-71-950 (Owner-Builder Class) and C-71-949 (Heating Contractor Class) for orders allowing those actions to be maintained as class actions were denied. Plaintiffs have moved for reconsideration of that order denying maintenance as class actions, and those motions for reconsideration are pending, along with the motions for class certification by all other plaintiffs who contend that they represent classes. If defendants should prevail at a trial of these actions, the plaintiffs and the members of their alleged classes would receive no recovery whatsoever. Furthermore, if some or all of the motions for class certification (or motions for reconsideration) are denied, non-litigating members of alleged classes which are not certified would be prevented from recovery regardless of any successful suit by plaintiffs.

Plaintiffs' attorneys have made an investigation of the facts and the law relating to the matters involved in this action, have conducted discovery by way of interrogatories and document demands, have reviewed and analyzed the responses thereto, have reviewed statistical analyses prepared by defendants, and have prepared independently their own statistical analyses.

After taking into account the many sharply contested issues involved, the risks attending further prosecution of this litigation including the questions concerning the statute of limitations, the likelihood or unlikelihood of class certification, the problems of proof as against each individual defendant, and individual plaintiffs' problems of proving actual damage for the period of the alleged conspiracy, plaintiffs and their counsel have concluded that the benefits to be received pursuant to the proposed settlement of these cases upon the terms provided herein are in the best interest of plaintiffs and of the purported classes represented by them.

Defendants desire to settle and compromise the claims asserted against them in order to avoid the further substantial expenses and burden of this already protracted litigation and to put this controversy to an end.

The preceding and subsequent description of the litigation and settlement is only a summary, set forth in detail sufficient to permit you to decide what steps, if any, you wish to take in relation to this litigation. All orders and opinions of the Court

BEST COPY AVAILABLE

and all papers filed in the[se] actions are available in full detail for your inspection [at the] office of the Clerk of the United States District Court, San Francis[co], California. In addition, the plaintiff and defendant representatives of the settlement committee set forth herein will provide you with further information that you may request.

2. Claims. Unless you elect to be excluded from these actions as hereinafter provided, this settlement, if consummated, shall bar any present or potential future claims against defendants, their subsidiaries, stockholders, officers, directors, agents and employees, past and present, under the antitrust laws based on sales made by any person of gas vent pipe directly or indirectly to any person from January 1, 1962 until May 5, 1975.

UNLESS YOU EXCLUDE YOURSELF FROM THIS SETTLEMENT ALL CLAIMS BASED ON SALES OF GAS VENT PIPE BETWEEN JANUARY 1, 1962, AND MAY 5, 1975, WILL BE BARRED. IF YOU ELECT TO PARTICIPATE IN THE SETTLEMENT YOUR RECOVERY WILL BE BASED SOLELY UPON PURCHASES MADE BETWEEN JANUARY 1, 1962, AND JUNE 30, 1971.

3. The Classes. Pursuant to the court's Order of November 19, 1975, the Court, at the request of the parties hereto, conditionally and tentatively established for settlement purposes classes and class representatives. These classes, which include all persons who purchased gas vent pipe from January 1, 1962 through May 5, 1975 and their representatives, are as follows:

A. WHOLESALER CLASS

Direct purchasers of gas vent pipe by whomever manufactured for use or resale in the form in which it was received from the manufacturer or in any other form including, without limiting the generality of the foregoing, wholesalers, jobbers, distributors, plumbing, heating and air conditioning supply houses, retailers and gas vent pipe manufacturers other than defendants. The named plaintiffs in actions No. C-74-221, C-74-1682 and C-74-2484 are the class representatives for this class.

B. HEATING CONTRACTOR CLASS

Indirect purchasers of gas vent pipe by whomever manufactured as sub-contractors in construction for the account of others of any structure or part thereof, of any kind or character including, without limiting the generality of the foregoing, contractors for homes and other buildings. The named plaintiffs in action No. C-71-949 are the class representatives for this class.

C. GENERAL CONTRACTORS CLASS

Indirect purchasers of gas vent pipe by whomever manufactured for use as general contractors in construction for the account of others of any structure, or part thereof, of any kind or character including, without limiting the generality of the foregoing, general contractors for homes and other buildings. The named plaintiffs in actions No. C-74-1695 and 75-213 are the class representatives for this class.

D. OWNER-BUILDER CLASS

Indirect purchasers of gas vent pipe by whomever manufactured who built or caused to be built for their own account, whether for their own use, rental or resale, any structure or part thereof of any kind or character, but not including purchasers referred to in the Wholesalers, Heating Contractor, General Contractor or Direct Use Classes. The named plaintiffs in action No. C-71-950 who are alleged to be owner-builders are the class representatives for this class.

E. DIRECT USE CLASS

Indirect purchasers of gas vent pipe by whomever manufactured for direct use by the purchaser in the manufacture of mobile homes, modular homes, recreational vehicles or any product, structure or part thereof. The named plaintiffs in actions No. C-74-1683, C-74-2691 and C-75-373 who are alleged to be direct users are the class representatives for this class.

4. Settlement. In final settlement of all present and potential claims, including claims for costs and attorneys' fees, against the defendants and related persons (such as the defendants' directors and officers) alleging violation of the antitrust laws relating to sales made directly or indirectly to any person of gas vent pipe between January 1, 1962 and May 5, 1975, the defendants have severally agreed to pay, when judgment becomes final, sums aggregating the amount of $1,350,000.00 (hereinafter reffered to as "the Settlement Fund"), plus interest.

Pursuant to the Plan of Distribution conditionally approved in the Order of the Court dated November 19, 1975, for the purpose of providing notice thereof and a hearing for final approval thereof, the Settlement Fund, as increased by interest, is to be shared by all of the members of each respective class in the proportion which their claims during the period January 1, 1962 to June 30, 1971 bear to the total claims of all claimants during this same period. Claims for purchases made between January 1, 1962 and December 31, 1967 will be allocated 10% of the value of claims for purchases made between January 1, 1968 and June 30, 1971.

Under the Plan of Distribution, computation of purchases will be upon a "unit" basis, as follows:

a. The gas vent pipe used in constructing one private dwelling house shall constitute 1 unit;
b. The gas vent pipe used in manufacturing one mobile home shall constitute 1 unit;
c. The gas vent pipe used in constructing each apartment in a multiple dwelling shall constitute ½ of a unit;
d. In the alternative to the above, gas vent pipe having a purchase price of Sixty-Five Dollars ($65.00) for General Contractor and Owner-Builder class members, and Forty Dollars ($40.00) for Wholesaler, Heating Contractor and Direct Use class members, shall constitute 1 unit.

In computation of units for purposes of distribution, units claimed by members of the Wholesaler and Direct Use classes will be multiplied by the factor 0.7.

It is estimated but not assured that the minimum monetary payment per unit of purchases for the January 1, 1962 through December 31, 1967 period will be approximately $0.025 (two and one-half cents), and for the January 1, 1968 through June 30, 1971 period will be approximately $0.25 (twenty-five cents). The maximum recovery could be greater.

Claims may be made by reporting, without duplication, either the number of homes or apartments or mobile homes built or manufactured using gas vent pipe or, in the alternative, by reporting the claimant's dollar purchases. In each instance, the claim form shall state specifically the location of the home or apartment, or other structure, or the manufacturing plant at which the mobile home was manufactured or the place of business of the wholesaler, general contractor, plumbing contractor or other seller, and the approximate dates of purchase.

Pursuant to the terms of the Settlement Agreements, the costs of administration of the Settlement Fund, the cost of this Notice, and the fees of plaintiffs' counsel, shall be paid from the Settlement Fund. The total amount of these costs and attorney fees is estimated to be approximately $400,000.

All petitions for attorney fees for services performed heretofore in these actions must be filed with the Clerk of the United States District Court for the Northern District of California, United States Court House, San Francisco, California, no later than March 15, 1976. These petitions will thereafter be available for inspection during normal business hours at the office of the Clerk. Any member of a class has the right to object to these petitions and may do so by written objections, court appearance, or both. However, no person not a named party will be heard and no papers will be received unless notices of intention to appear and written objections are served and filed in conformity with the requirements set forth below. The court will hear argument and consider objections at the hearing noticed below on April 22, 1976.

Each member of a class who does not elect to be excluded from this action as provided below shall be bound by the Plan of Distribution if finally approved by the court.

5. Advantages and Disadvantages of Proposed Settlement. As is true of most settlements, this proposed settlement has advantages and disadvantages to both the class members and the defendants.

Among the advantages which accrue to the class members are assured partial recoveries for all valid claims in all classes in the claim periods, payments within a reasonably short period of time, significantly smaller costs of litigation, and minimum disruption of the regular business functions of class members for the purpose of proof of damages.

The primary disadvantage of participation in this settlement is that class members will forego the opportunity to establish defendants' liability, if any, at trial and to prove and receive greater monetary damages than will be recovered pursuant to this settlement. Moreover, those who do not exclude themselves from this settlement will recover nothing as to purchases of gas vent pipe made between June 30, 1971 and May 5, 1975.

The factors which entered into the decision by plaintiffs' counsel to recommend this settlement are:

a. The difficulties in proving an antitrust conspiracy action, both as to liability and damages. Counsel for plaintiffs believe these difficulties of proof are much greater for the purchases made between January 1, 1962 and December 31, 1967 and have thus recommended that the purchases during that period should be valued at 10% of the claims for purchases between January 1, 1968 and June 30, 1971. Furthermore, counsel for plaintiffs advise they have no evidence of illegal conduct after June 30, 1971, and recommend that there be no recovery on claims for purchases made after that date.

b. The time lapse between institution of litigation and final termination.

c. The substantial unresolved legal questions as to the rights of members of each of the classes to claim damages.

d. The poor economic conditions currently existing in the construction industry.

e. The fact that any class member not wishing to be bound by the settlement may exclude itself therefrom and, subject to applicable law, proceed on its own behalf.

6. Contingencies. This settlement is subject to the right of any Settling Defendant to withdraw from the Settlement Agreement prior to February 17, 1976 in the event any class members have requested exclusion and such exclusions are substantial in the judgment of the withdrawing defendant. Also, the Court might not approve this settlement whether there are exclusions or not. Should the settlement not be consummated for any reason, no class member other than parties already named in the various cases will become party to the litigation, absent further order of Court.

7. Hearing. Pursuant to an Order of the United States District Court for the Northern District of California, dated November 19, 1975, a hearing will be held before the Honorable William Matthew Byrne, Jr., United States District Judge, in the Ceremonial Courtroom, United States Courthouse, San Francisco, California, on the 22nd day of April, 1976, at 10:30 o'clock A.M., at which time the Court will consider whether the Settlement Classes should be determined and ordered to be final and permanent classes for purposes of the above-numbered gas vent pipe antitrust actions; whether the class representatives shall be as provided in the Settlement Agreements; whether the Plan of Distribution submitted to the Court by the respective class representatives shall be approved; whether the settlement of these actions in the manner and on the terms set forth above, and in greater detail in the Settlement Agreements, shall be approved as fair, reasonable and adequate; whether the applications for attorneys' fees and other expenses, which are expected in total no more than $400,000, shall be approved; and whether final judgments of dismissal with prejudice shall be entered against all settling plaintiffs and members of the settlement classes who have not timely excluded themselves from these actions.

At that hearing, any member of a Settlement Class who has not timely excluded himself from these actions and who wishes to oppose the settlement of these actions on the terms described herein and in the Settlement Agreements, or to oppose the application for attorneys fees or other expenses, may present evidence or argument relevant to issues to be heard, provided that any such member has filed and served a timely written notice of intention to appear, as described below.

NOW, THEREFORE, TAKE NOTICE:

I. Unless, on or before February 2, 1976, you file with the Clerk of this Court a request to be excluded from these actions, you will be bound to look only to the Settlement Fund referred to above for relief as to any claims you may have against the defendants for antitrust violations in sales of gas vent pipe by any person between January 1, 1962 and May 5, 1975. Should you decide to participate in the settlement, the amount of your recovery will be based solely upon your purchases made between January 1, 1962, and June 30, 1971. If you elect to be excluded from these actions, you must file with the Clerk of this Court a request to be excluded substantially in the form of the "Election to be Excluded" which is attached hereto as Attachment I. If you send such a request, you cannot participate in this settlement, you will receive no further notice of any further proceedings, hearings, orders or other matters in this settlement, you will be excluded from the classes established, and will not be bound by any judgments entered herein.

II. If you do not elect to be excluded from these actions, you will nevertheless be precluded from participating in this settlement unless you mail to the Clerk of the United States District Court for the Northern District of California, P.O. Box 7908, San Francisco, California 94120, not later than March 1, 1976, a sworn written statement of your claim using the form of "Statement of Claim" which is attached hereto as Attachment II, or in substantially identical form. If additional copies of the form are desired, they may be obtained upon written request therefor to the Clerk of the Court, P.O. Box 7908, San Francisco, California 94120.

III. If you are a member of the class and either do not (elect to be excluded on or before February 2, 1976 or (b)do not file a valid Statement of Claim on or before March 1, 1976, you will be barred from recovery in this settlement, you will be bound by the dismissal of these actions if the court approves this settlement, and you will not receive notice of any future proceedings, hearing, orders or other matters.

IV. On April 22, 1976, at 10:30 o'clock a.m., a hearing pursuant to Federal Rules of Civil Procedure 23(e) will be held before

Judge Wm. Matthew Byrne, J... e Ceremonial Courtroom, United States Court Hou... ian Francisco, California, at which time the court will determine final approval of settlement clas... and whether settlement of these cases on the terms set forth above should be approved. Any member of any class may, either by appearance or in writing, show cause why:

(a) The Settlement Classes should not be ordered to be final and permanent classes for purposes of the above-numbered antitrust actions;

(b) The class representatives shall not be as provided in the Settlement Agreements;

(c) The settlement of these actions in the manner and on the terms set forth above, and in greater detail in the Settlement Agreements, shall not be approved as fair, reasonable and adequate;

(d) The application for attorneys' fees and other expenses shall not be approved;

(e) Final judgments of dismissal with prejudice shall not be entered against all settling plaintiffs and members of the settlement classes who have not timely excluded themselves.

If you desire to appear at this hearing, you must file a written statement of your intention to do so. If you desire to appear through counsel, your counsel must file a notice of such intention in which the basis for your objection is stated. You are not required to appear, but may file your objection in writing. All such objections, notices, and other papers must be filed with the Clerk of the United States District Court for the Northern District of California, P.O. Box 7908, San Francisco, California 94120, on or before April 1, 1976. Copies of all such notices, objections, or other papers must be served in person or by mail upon Plaintiffs' Settlement Committee Representative, Stephen P. Oggel, Esq., 2100 Crocker Plaza, San Francisco, California 94104, and Defendants' Settlement Committee Representative, Theodore R. Tetzlaff, Esq., One IBM Plaza, Chicago, Illinois 60611.

V. Your Election to be Excluded from this action or, in the alternative, your Statement of Claim, should be addressed to: Clerk of the United States District Court for the Northern District of California, P.O. Box 7908, San Francisco, California 94120. Compliance with the deadlines prescribed by this Notice shall be evidenced by date of postmark.

VI. If you have any questions concerning this Notice, or concerning the procedures for excluding yourself or, in the alternative for filing claim, your inquiries may be addressed to:

Stephen P. Oggel, Esquire
2100 Crocker Plaza
San Francisco, California 94104
Telephone: (415) 397-7667 or (714) 236-1611

DATED: San Francisco California
November 19, 1975.

William L. Whittaker
Clerk of the United States District Court of the Northern District of California, San Francisco, California

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ATTACHMENT I
Election To Be Excluded

Clerk of the United States District Court
P.O. Box 7908
San Francisco, California 94120

Dear Sir:

The undersigned hereby acknowledges receipt of the Notice dated November 19, 1975, concerning the actions relating to the alleged price-fixing of Type B double-walled gas vent pipe and fittings.

Please be advised that the undersigned elects to be excluded from these actions.

Very truly yours,

_____
(Title of Entity)

By _____
(Name and title of person authorized to execute Election to be Excluded on behalf of entity named above)

DATED: _____

Statement of Claim

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT
(This Form Must be Sworn; See Over)

In Re:	)	
	)	
MASTER KEY ANTITRUST LITIGATION,	)	M.D.L. DOCKET NO. 45
	)	
Plaintiffs.	)	

I. ALL CLAIMANTS complete this section:

A. Class of Claimant

Private Builder-Owner Class--Any person or firm that constructed hotels, motels, office buildings and apartment buildings having Master Key Systems with contract hardware manufactured by any of the defendants. ☐ (1)

Governmental Class--Any public entity that built structures having Master Key Systems with contract hardware manufactured by any of the defendants. ☐ (2)

B. Claimant Name_____

Present Address_____

City_____State_____Zip_____

C. Person to contact for further information regarding this claim:

_____
Name Title (Area code/Ph. No.)

II. Claimants in the PRIVATE BUILDER-OWNER and GOVERNMENTAL Classes, complete this section:

IDENTIFY ALL HOTELS, MOTELS, OFFICE BUILDINGS, APARTMENT BUILDINGS AND OTHER STRUCTURES WHICH YOU BUILT HAVING MASTER KEY SYSTEMS WITH CONTRACT HARDWARE MANUFACTURED BY ANY OF THE DEFENDANTS.

IN THE ALTERNATIVE, SHOW FOR EACH YEAR THE TOTAL DOLLAR AMOUNT OF MASTER KEY SYSTEMS WITH CONTRACT HARDWARE MANUFACTURED BY ANY OF THE DEFENDANTS WHICH WERE INCORPORATED IN ALL BUILDINGS OR STRUCTURES BUILT BY YOU. DO NOT DUPLICATE IN COLUMN 5 OR SHOW THE SAME PURCHASES AS REPORTED IN COLUMNS 1, 2, 3 OR 4.

(Attach additional schedules if necessary.)

Month and Year	Project or Job Identification*	1 Dollar Value of Emhart Master Key System Wtih Contract Hardware	2 Dollar Value of Sargent Master Key System With Contract Hardware	3 Dollar Value of Lockwood Master Key System With Contract Hardware	4 Dollar Value of Yale Master Key System With Contract Hardware	5** Total Dollar Value of Master Key System With Contract Hardware

*Identify by name and address for each project or job for which you are claiming

**Claimants should show in this column purchases not shown in columns 1, 2, 3 and 4.

SWORN AND NOTARIZED STATEMENT OF CLAIM

I, _____,
(Name of person signing for claim enclosed)

swear or affirm that the information contained in this Claim Form of _____
(Name of Claimant)

attached hereto, is true and correct to the best of my knowledge and belief; that such Claim Form constitutes the only claim being made by such claimant for recovery on the basis indicated on Claim Form; and that the claimant qualifies as a member of the indicated class as defined in the Notice of Class Action and Proposed Settlement, and did not elect to be excluded from such class.

I understand that the information contained on the Claim Form attached hereto is subject to such verification as the court may direct, and I agree to cooperate in any such verification.

_____
Signature of person signing for Claimant

SWORN TO BEFORE ME, and subscribed in my presence this ____day of _____, 1976.

_____
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

398

IN RE:
MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45

NOTICE OF CLASS ACTION AND PARTIAL SETTLEMENT WITH RESPECT TO LITIGATION INVOLVING FINISH HARDWARE

TO: ALL STATE, COUNTY AND LOCAL GOVERNMENTAL ENTITIES AND PUBLIC AND PRIVATE BUILDER-OWNERS OF STRUCTURES HAVING MASTER KEY SYSTEMS INSTALLED SINCE 1950

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby notified:

Seventeen civil actions for treble damages have been filed against the EATON CORPORATION, EMHART CORPORATION, SARGENT & COMPANY and ILCO CORPORATION (the "defendants"), which have been consolidated for trial before the United States District Court in Hartford, Connecticut. These actions were certified as class actions on May 27, 1975. Thereafter, the representative plaintiffs and one of the defendants, Emhart Corporation, presented a settlement agreement to the court for its approval pursuant to Rule 23(e). The court has authorized notice to all plaintiffs, intervenors and class members of the settlement and the conduct of hearings thereon.

A. The Litigation

The complaints in these lawsuits allege that since 1950 defendants have violated the federal antitrust laws by agreeing and engaging in concerted action to fix and maintain prices of finish hardware at non-competitive levels and to restrain competition among their dealers in the sale of finish hardware for construction projects with master key systems. The complaints further charge that defendants conspired among themselves and with their dealers to allocate territories, customers and jobs, and to rig bids to contractors, and that as a result of this alleged illegal action, public entities and certain private builder-owners have paid higher prices than they would have paid in a freely competitive market for finish hardware installed on public buildings, including schools, hospitals and universities, and on certain commercial buildings, namely, hotels, motels, office buildings and apartment houses. It is alleged that the illegal conduct inflated the prices of all finish hardware regardless of the local dealer through whom the hardware was sold. The defendants sell finish hardware under the following brand names: RUSSWIN, CORBIN, SARGENT, LOCKWOOD and YALE. Each of the defendants denies these allegations and contends that their conduct has been lawful in all respects.

The District Court has not passed on any contentions of the parties, and therefore no implications should be drawn from the sending of this notice regarding the merits of the litigation.

B. The Classes

On May 27, 1975, the District Court ruled that the pending lawsuits could be maintained on behalf of the following classes and that notice should be given to the entities included within the respective classes.

1. The state-wide governmental classes consisting of all counties, municipalities, and other local and regional governmental subdivisions, and all public agencies, authorities, departments and institutions that built structures having master key systems with contract hardware manufactured by any of the defendants in the following states:

Illinois	West Virginia	Connecticut
Indiana	Wisconsin	Florida
Michigan	Colorado	Kansas
Minnesota	Arizona	New York
Pennsylvania	California	Ohio

2. The national governmental class represented by the City of Philadelphia and including all governmental and political subdivisions, and all public agencies, authorities, departments and institutions throughout the United States, with the exception of those states and public entities listed in the foregoing paragraph, that built structures having master key systems with contract hardware manufactured by any of the defendants and that are not included in the state-wide governmental class actions.

3. The private builder-owner class represented by plaintiffs in Amherst Leasing Corp. v. Emhart Corp., et al, Civil No. 14,234, and consisting of all private persons and firms in the United States, who built for their own account or had built for them, whether for their own use, rental or sale, hotels, motels, office buildings and apartment buildings having master key systems with contract hardware manufactured by any of the defendants.

C. Partial Settlement with Emhart Corporation

The Emhart Corporation, one of the defendants, has agreed to pay the aggregate amount of Seven Million Five Hundred Thousand Dollars ($7,500,000) in final settlement of all claims against Emhart involved in this litigation including the claims of plaintiffs, intervenors and class members. This sum was deposited in an escrow account in August 1975, and invested in interest-bearing securities, which interest will be added to the settlement fund.

The settlement agreement provides that the fund shall be allocated among the classes as follows:

The state-wide and national governmental classes: eighty (80%) per cent.
The private builder-owner class: twenty (20%) per cent.

The fairness and reasonableness of the amount of the settlement and the allocation of the fund between the public entities and private builder-owner classes is subject to the approval of the court.

The distribution of the settlement fund among the respective governmental classes, including all plaintiffs and intervenors, will be based upon plans of distribution to be filed by the class representatives with the court for its consideration and approval or modification at subsequent proceedings. Such distribution will be based upon all relevant information including statistics that reflect capital expenditures for structures using finish hardware and purchases of finish hardware.

All attorneys' fees, costs and expenses of litigation and expenses of notice and administration incurred in connection with this settlement, as may be allowed or approved by the court, shall be deducted from the settlement fund. It is anticipated that petitions will be filed by counsel for the various class representatives seeking approximately 20% of the recovery as fees. It is anticipated that expenses other than attorneys' fees will total less than 2% of the settlement fund.

Emhart Corporation may withdraw from the settlement if, in its judgment, a significant number of class members request exclusion from the class action. Emhart expressly denies all liability and maintains that its actions have been lawful in all respects.

As more fully set forth in the settlement agreement, upon approval of the settlement by the court, and such approval becoming final, each plaintiff, intervenor, and class member which does not elect to be excluded shall participate in the distribution of the settlement fund and shall be deemed to have covenanted to refrain from proceeding against Emhart Corporation on any present or prospective claim pertaining to any building or construction project using master key systems, and/or relating to any direct or indirect purchase of finish hardware to the date of the settlement agreement.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut (the "court"), beginning on Wednesday, June 2, 1976, at 10:00 o'clock a.m., in the North Courtroom of the United States Courthouse, 450 Main Street, Hartford, Connecticut. The purpose of this hearing is to determine whether the proposed settlement of the pending class actions against Emhart Corporation is fair and adequate. If the settlement is approved, Emhart Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the other defendants. The court will not consider at this hearing the distribution of the settlement funds within the respective public and private classes, which matters are reserved for subsequent hearings and determination by the court.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure:

YOU ARE HEREBY NOTIFIED:

1. You may qualify as a member of one or more of the above-defined classes.

2. If you are a member of one or more of the classes defined above, which include all plaintiffs and intervenors, you will be included in, and you will be bound by, any judgment in this litigation, including any settlement and allocation of funds approved by the court and any determination affecting the classes of which you are a member unless you mail to the Clerk of the Court on or before Wednesday, April 28, 1976, a written election to be excluded from the classes of plaintiffs.

3. If you desire to be excluded from this litigation, you must notify the Clerk of the Court at the address noted below not later than Wednesday, April 28, 1976. If you elect to be excluded from the class or classes as herein defined, you will remain free to pursue on your own behalf whatever legal rights you may have, but you will not be entitled to participate in any distribution from the settlement fund.

4. If you do not request exclusion from the class by Wednesday, April 28, 1976, any judgment or other disposition of the action will be binding upon you, regardless of whether it is favorable or not, and you may be required to respond to appropriate discovery requests.

5. If you do not elect to be excluded from the class of plaintiffs, you may, but need not, enter an appearance through counsel of your choice, but not later than Thursday, May 13, 1976.

6. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard and, subject to reasonable limitations by the court, present evidence at the hearing set for Wednesday, June 2, 1976, to consider the fairness and adequacy of the proposed settlement and the allocation of the settlement fund between the classes; provided, however, that no such person shall be heard, and no papers submitted by such person shall be considered by the court, unless said papers and notice of intention to appear have been mailed to the Clerk of the Court by Thursday, May 13, 1976.

7. All documents which you desire to file of record in this case should be addressed to:

Master Key Litigation
Sylvester A. Markowski, Clerk
United States District Court
P.O. Box 636
Hartford, Connecticut 06101

8. The pleadings and other records in this litigation (M.D.L. Docket No. 45), including the settlement agreement, may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this notice should be made to the undersigned Clerk.

Sylvester A. Markowski, Clerk
United States District Court
450 Main Street
Hartford, Connecticut 06103

(415)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
AMHERST LEASING CORPORATION, et al., Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,234

NOTICE OF FILING LETTER TO ACCOMPANY CLASS ACTION AND PARTIAL SETTLEMENT NOTICE

TO: All Defense Counsel

Amherst Leasing Corporation, by its attorney, proposes to include the attached letter (marked as Exhibit I) with the class action and partial settlement notice being mailed to the membership of the Building Owners and Managers Association International for further distribution to private class members.

H. LADDIE MONTAGUE, JR.

DAVID BERGER, P.A.
1622 Locust Street
Philadelphia, PA 19103
(215) 732-8000

DATED: March 23, 1976

RE: In Re Master Key Antitrust Litigation;
Class Action (MDL Docket No. 45, D.Conn.)

Dear Sirs:

It has been brought to the attention of this Court hat you may manage apartment and/or office buildings which have had MASTER KEY SYSTEMS from one or more of the defendants installed within them during the period 1950 through 1970. If so, the owners of those buildings may be members of a plaintiff class and thus have an interest in the United States District Court for the District of Connecticut against four major finish hardware manufacturers of the following brand names: Russwin, Corbin, Sargent, Lockwood and Yale.

Enclosed please find the Notice from the District Court describing the nature of the class action and a $7,500,000 settlement with one major defendant. The Court requests your cooperation in forwarding a copy of this Notice to each of the owners of the buildings you manage who may be a member of the class.

To obtain additional copies of the enclosed Notice, write to:

Master Key Litigation
Sylvester A. Markowski, Clerk
United States District Court
P. O. Box 636
Hartford, Connecticut 06101

Please include with your request a list of owners and buildings to whom you are sending the Notices.

If you have any questions, please address all inquiries to the address in the preceeding paragraph.

s/Sylvester A. Markowski
Sylvester A. Markowski, Clerk
United States District Court
for the District of Connecticut

EXHIBIT I

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing NOTICE OF FILING LETTER TO ACCOMPANY CLASS ACTION AND PARTIAL SETTLEMENT NOTICE was served upon all Defense Counsel this 23rd day of March, 1976.

H. L. Montague, Jr.

H. LADDIE MONTAGUE, JR.

(447)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	All Cases

STATE OF ILLINOIS)
)
COUNTY OF COOK)

AFFIDAVIT OF MAILING NOTICE TO PUBLIC ENTITIES OF CLASS ACTION AND PARTIAL SETTLEMENT WITH RESPECT TO LITIGATION INVOLVING FINISH HARDWARE

KAROL K. GIBBS, being first duly sworn on oath, deposes and says that she is employed by the firm of Freeman, Rothe, Freeman & Salzman, which firm has acted as co-liaison counsel and counsel for the national and state-wide governmental classes involved in the above-entitled cause. This affidavit is made in connection with the procedures established by the Court for the mailing and newspaper publication of NOTICE OF CLASS ACTION AND PARTIAL SETTLEMENT WITH RESPECT TO LITIGATION INVOLVING FINISH HARDWARE to all class members. Affiant is personally familiar with the facts recited herein and makes this affidavit on the basis of her personal knowledge. Affiant hereby states:

1. Under my supervision, addresses were located for all identifiable public entities in the United States (with the exception of those states listed below in Paragraph 2) and notices were sent to public entities in the

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following categories:

(a) All states and commonwealths that had not filed their own state-wide class actions.

(b) All school districts with an enrollment of more than 250 in the States of Colorado, Illinois, Indiana, Michigan, Minnesota, West Virginia, Wisconsin and the Commonwealth of Pennsylvania.

(c) All school districts with an enrollment of more than 1,000 in those states included in the national class action.

(d) All municipalities of more than 2,500 in the States of Colorado, Illinois, Indiana, Michigan, Minnesota, West Virginia, Wisconsin and the Commonwealth of Pennsylvania.

(e) All municipalities of more than 10,000 in those states included in the national class action.

(f) All counties.

(g) All public hospitals.

(h) All publicly supported institutions of higher education.

(i) Housing Authorities in the State of Minnesota and the Commonwealth of Pennsylvania.

2. The States of Arizona, California, Connecticut, Kansas, New York and Ohio generated their own address labels and mailed the Notices of Class Action and Partial Settlement. No Notices were sent to entities in the State of New Jersey.

3. Lists of public entities and mailing labels for potential class members were obtained from the following published sources:

(a) National Business Lists, Inc.

(b) Higher Education Directory, published by the Department of Health, Education and Welfare (1973-74 edition).

4. I employed Northwest Mailing Service, Inc., an Illinois corporation, to print the Notice of Class Action and Partial Settlement and return addressed envelopes.

5. Northwest Mailing forwarded the quantities of the Notice and envelopes required to the States of Arizona, California, Connecticut, Kansas, New York and Ohio. For the remaining forty-three states, I employed Northwest Mailing Service, Inc. to insert the Notices in return addressed envelopes, affix the mailing labels and mail with first class postage.

6. The Attorneys General of nine states provided letters which were included with the Notices directed to public entities in their states.

7. Subsequent to the principal mailing, approximately 83 envelopes were returned by the postal service for incomplete or insufficient addresses. Our office attempted to locate current addresses and remailed 26 of these envelopes on April 14, 1976.

8. I employed the Wall Street Journal to publish the Notice of Class Action and Partial Settlement on March 29, 1976, as required by the Court.

Further the affiant sayeth not.

Karol K Gibbs
KAROL K. GIBBS

Subscribed and Sworn to before me
this 27th day of April, 1976.

Darlene F. Holtz
Notary Public

Interest will be added to

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:
MASTER KEY ANTITRUST LITIGATION

M.D.L. DOCKET NO. 45
All Cases

STATE OF ILLINOIS)
)
COUNTY OF COOK)

AFFIDAVIT OF MAILING

I, JACK M. JOSS, being first duly sworn on oath, depose and state as follows:

1. I am President of Northwest Mailing Service, Inc., an Illinois corporation.

2. The Notice of Class Action and Partial Settlement with Respect to Litigation Involving Finish Hardware prescribed by the Court in the above-captioned proceedings was printed under my direction, supervision and control, and is attached hereto as Exhibit 1.

3. I caused such Notice to be mailed in accordance with the directives of the Court by enclosing the appropriate copies of such Notice (and letters from Attorneys General where appropriate) in return addressed envelopes printed under my direction, franking same, and depositing all such envelopes at the U.S. Post Office in Chicago, Illinois on March 29, 1976.

4. The Attorneys General of Colorado, Florida, Illinois, Indiana, Michigan, Minnesota, Pennsylvania, West

Virginia and Wisconsin provided letters to be included with the Notices forwarded to their states. Copies of same are attached as Exhibits 2-10.

5. Copies of mailing labels used are attached hereto as:

Exhibit 11 -	Labels provided by National Business Lists, Inc., Chicago
Exhibit 12 -	Labels provided by State of Minnesota
Exhibit 13 -	Labels typed under my direction from lists provided by the Commonwealth of Pennsylvania
Exhibit 14 -	Labels typed under my direction from the Higher Education Directory
Exhibit 15 -	Labels for Attorneys General typed by Freeman, Rothe, Freeman & Salzman

Attached hereto as Exhibits 16, 17 and 18 are three copies of "Sender's Statement and Certificate of Bulk Mailing," POD Form 3606, issued in connection with said mailing.

Further the affiant sayeth not.

JACK M. JOSS

Subscribed and Sworn to before me this 27th day of April, 1976.

Darlene F. Holtz
Notary Public

interest will be added to the settlement fund.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN RE:)
)
MASTER KEY ANTITRUST LITIGATION) M.D.L. DOCKET NO. 45

NOTICE OF CLASS ACTION AND PARTIAL SETTLEMENT WITH RESPECT TO LITIGATION INVOLVING FINISH HARDWARE

TO: ALL STATE, COUNTY AND LOCAL GOVERNMENTAL ENTITIES AND PUBLIC AND PRIVATE BUILDER-OWNERS OF STRUCTURES HAVING MASTER KEY SYSTEMS INSTALLED SINCE 1950

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby notified:

Seventeen civil actions for treble damages have been filed against the EATON CORPORATION, EMHART CORPORATION, SARGENT & COMPANY and ILCO CORPORATION (the "defendants"), which have been consolidated for trial before the United States District Court in Hartford, Connecticut. These actions were certified as class actions on May 27, 1975. Thereafter, the representative plaintiffs and one of the defendants, Emhart Corporation, presented a settlement agreement to the court for its approval pursuant to Rule 23(e). The court has authorized notice to all plaintiffs, intervenors and class members of the settlement and the conduct of hearings thereon.

A. The Litigation

The complaints in these lawsuits allege that since 1950 defendants have violated the federal antitrust laws by agreeing and engaging in concerted action to fix and maintain prices of finish hardware at non-competitive levels and to restrain competition among their dealers in the sale of finish hardware for construction projects with master key systems. The complaints further charge that defendants conspired among themselves and with their dealers to allocate territories, customers and jobs, and to rig bids to contractors, and that as a result of this alleged illegal action, public entities and certain private builder-owners have paid higher prices than they would have paid in a freely competitive market for finish hardware installed on public buildings, including schools, hospitals and universities, and on certain commercial buildings, namely, hotels, motels, office buildings and apartment houses. It is alleged that the illegal conduct inflated the prices of all finish hardware regardless of the local dealer through whom the hardware was sold. The defendants sell finish hardware under the following brand names: RUSSWIN, CORBIN, SARGENT, LOCKWOOD and YALE. Each of the defendants denies these allegations and contends that their conduct has been lawful in all respects.

The District Court has not passed on any contentions of the parties, and therefore no implications should be drawn from the sending of this notice regarding the merits of the litigation.

B. The Classes

On May 27, 1975, the District Court ruled that the pending lawsuits could be maintained on behalf of the following classes and that notice should be given to the entities included within the respective classes.

1. The state-wide governmental classes consisting of all counties, municipalities, and other local and regional governmental subdivisions, and all public agencies, authorities, departments and institutions that built structures having master key systems with contract hardware manufactured by any of the defendants in the following states:

Illinois	West Virginia	Connecticut
Indiana	Wisconsin	Florida
Michigan	Colorado	Kansas
Minnesota	Arizona	New York
Pennsylvania	California	Ohio

2. The national governmental class represented by the City of Philadelphia and including all governmental and political subdivisions, and all public agencies, authorities, departments and institutions throughout the United States, with the exception of those states and public entities listed in the foregoing paragraph, that built structures having master key systems with contract hardware manufactured by any of the defendants and that are not included in the state-wide governmental class actions.

3. The private builder-owner class represented by plaintiffs in Amherst Leasing Corp. v. Emhart Corp., et al, Civil No. 14,234, and consisting of all private persons and firms in the United States, who built for their own account or had built for them, whether for their own use, rental or sale, hotels, motels, office buildings and apartment buildings having master key systems with contract hardware manufactured by any of the defendants.

C. Partial Settlement with Emhart Corporation

The Emhart Corporation, one of the defendants, has agreed to pay the aggregate amount of Seven Million Five Hundred Thousand Dollars ($7,500,000) in final settlement of all claims against Emhart involved in this litigation including the claims of plaintiffs, intervenors and class members. This sum was deposited in an escrow account in August 1975, and invested in interest-bearing securities, which interest will be added to the settlement fund.

The settlement agreement provides that the fund shall be allocated among the classes as follows:

The state-wide and national governmental classes: eighty (80%) per cent.
The private builder-owner class: twenty (20%) per cent.

The fairness and reasonableness of the amount of the settlement and the allocation of the fund between the public entities and private builder-owner classes is subject to the approval of the court.

The distribution of the settlement fund among the respective governmental classes, including all plaintiffs and intervenors, will be based upon plans of distribution to be filed by the class representatives with the court for its consideration and approval or modification at subsequent proceedings. Such distribution will be based upon all relevant information including statistics that reflect capital expenditures for structures using finish hardware and purchases of finish hardware.

All attorneys' fees, costs and expenses of litigation and expenses of notice and administration incurred in connection with this settlement, as may be allowed or approved by the court, shall be deducted from the settlement fund. It is anticipated that petitions will be filed by counsel for the various class representatives seeking approximately 20% of the recovery as fees. It is anticipated that expenses other than attorneys' fees will total less than 2% of the settlement fund.

Emhart Corporation may withdraw from the settlement if, in its judgment, a significant number of class members request exclusion from the class action. Emhart expressly denies all liability and maintains that its actions have been lawful in all respects.

As more fully set forth in the settlement agreement, upon approval of the settlement by the court, and such approval becoming final, each plaintiff, intervenor, and class member which does not elect to be excluded shall participate in the distribution of the settlement fund and shall be deemed to have covenanted to refrain from proceeding against Emhart Corporation on any present or prospective claim pertaining to any building or construction project using master key systems, and/or relating to any direct or indirect purchase of finish hardware to the date of the settlement agreement.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a hearing will be held before the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut ("the court"), beginning on Wednesday, June 2, 1976, at 10:00 o'clock a.m., in the North Courtroom of the United States Courthouse, 450 Main Street, Hartford, Connecticut. The purpose of this hearing is to determine whether the proposed settlement of the pending class actions against Emhart Corporation is fair and adequate. If the settlement is approved, Emhart Corporation will be dismissed from these actions with prejudice; these actions will remain pending against the other defendants. The court will not consider at this hearing the distribution of the settlement funds within the respective public and private classes, which matters are reserved for subsequent hearings and determination by the court.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure:

YOU ARE HEREBY NOTIFIED:

1. You may qualify as a member of one or more of the above-defined classes.

2. If you are a member of one or more of the classes defined above, which include all plaintiffs and intervenors, you will be included in, and you will be bound by, any judgment in this litigation, including any settlement and allocation of funds approved by the court and any determination affecting the classes of which you are a member unless you mail to the Clerk of the Court on or before Wednesday, April 28, 1976, a written election to be excluded from the classes of plaintiffs.

3. If you desire to be excluded from this litigation, you must notify the Clerk of the Court at the address noted below not later than Wednesday, April 28, 1976. If you elect to be excluded from the class or classes as herein defined, you will remain free to pursue on your own behalf whatever legal rights you may have, but you will not be entitled to participate in any distribution from the settlement fund.

4. If you do not request exclusion from the class by Wednesday, April 28, 1976, any judgment or other disposition of the action will be binding upon you, regardless of whether it is favorable or not, and you may be required to respond to appropriate discovery requests.

5. If you do not elect to be excluded from the class of plaintiffs, you may, but need not, enter an appearance through counsel of your choice, but not later than Thursday, May 13, 1976.

6. Any plaintiff, intervenor or member of the plaintiff classes may appear and be heard and, subject to reasonable limitations by the court, present evidence at the hearing set for Wednesday, June 2, 1976, to consider the fairness and adequacy of the proposed settlement and the allocation of the settlement fund between the classes; provided, however, that no such person shall be heard, and no papers submitted by such person shall be considered by the court, unless said papers and notice of intention to appear have been mailed to the Clerk of the Court by Thursday, May 13, 1976.

7. All documents which you desire to file of record in this case should be addressed to:

Master Key Litigation
Sylvester A. Markowski, Clerk
United States District Court
P.O. Box 636
Hartford, Connecticut 06101

8. The pleadings and other records in this litigation (M.D.L. Docket No. 45), including the settlement agreement, may be examined and copied at any time during regular office hours at the offices of the Clerk.

All inquiries in connection with this notice should be made to the undersigned Clerk.

Sylvester A. Markowski, Clerk
United States District Court
450 Main Street
Hartford, Connecticut 06103

J.D. MacFarlane
Attorney General

Jean E. Dubofsky
Deputy Attorney General

Edward G. Donovan
Solicitor General

The State of Colorado

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1575 Sherman Street
517 Social Services Building
Denver, Colorado 80203
(303) 892-3271

Re: Master Key Antitrust Litigation,
M.D.L. Docket No. 45

Dear Sir:

The Attorney General's office recently initiated an antitrust damage action against four manufacturers of finish hardware products on behalf of the State of Colorado, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions organized under Colorado law. The action is pending in the United States District Court for the District of Connecticut under the caption State of Colorado v. Emhart Corp., Eaton Corp., Sargent & Co. and Ilco Corp., No. 14,233.

As explained in the enclosed notice, being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the State of Colorado is class representative for all public agencies and political subdivisions in Colorado. The Attorney General is counsel of record with full responsibility for prosecution of this action. In this connection you may have already supplied information to this office.

The notice of class action summarizes the allegations of the complaint and sets forth the terms of the settlement that has been reached with one of the defendants, Emhart Corporation, which manufactures hardware under the brand names Corbin and Russwin. The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court following approval of the settlement.

If you do not request exclusion by advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by the Attorney General.

If you have any questions regarding this litigation, please contact Robert F. Hill, First Assistant Attorney General, Antitrust Section, 1575 Sherman Street, Room 517, Denver, Colorado 80203 (Telephone No. (303) 892-3271) or Lee A. Freeman, Jr., Co-Liaison Counsel for plaintiffs, One IBM Plaza, Suite 3200, Chicago, Illinois 60611 (Telephone No. (312) 467-6540).

Very truly yours,

J. D. MacFARLANE
Attorney General

Enclosure
JDM:bl

Ex. 2

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32304

ROBERT L. SHEVIN
Attorney General

RE: Master Key Antitrust Litigation
M.D.L. Docket No. 45

Dear Sir:

Pursuant to the authority vested in him by law, your Attorney General has brought an antitrust damage action against four manufacturers of finish hardware on behalf of the State of Florida, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions. The action is pending in the United States District Court for the District of Connecticut under the caption State of Florida v. Emhart Corp., Eaton Corp., Sargent & Co. and Ilco Corp., No. 14,231.

As explained in the enclosed notice, sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the State of Florida is class representative for all public agencies and political subdivisions in Florida. The Attorney General is counsel of record, with full responsibility for prosecution of this action. In this connection you may have already supplied information to the Attorney General's office.

The notice of class action summarizes the allegations of the complaint and sets forth the terms of the settlement that has been reached with one of the defendants, Emhart Corporation, which manufactures hardware under the brand names "Corbin" and "Russwin." The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court following approval of the settlement.

If you do not request exclusion by advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by the Attorney General.

If you have any questions, please contact Special Assistant Attorney General, Frederic B. Burns, Suite 300, Bank of Kendall Building, 8603 South Dixie Highway, Miami, Florida 33143 (Telephone: (305)661-5055).

Sincerely,

Robert L. Shevin

ROBERT L. SHEVIN
ATTORNEY GENERAL

RLS/e

Ex. 3

This is 100% Recycled Paper.

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
160 NORTH LA SALLE ST
CHICAGO 60601

TELEPHONE
FINANCIAL 6-2000

Re: Master Key Antitrust Litigation,
M.D.L. Docket No. 45

Dear Sir:

Pursuant to 38 Illinois Revised Statues §60-7.8, the Attorney General has brought an antitrust damage action against four manufacturers of finish hardware on behalf of the State of Illinois, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions. The action is pending in the United States District Court for the District of Connecticut under the caption State of Illinois v. Emhart Corp., Eaton Corp., Sargent & Co. and Ilco Corp., No. 15,262.

As explained in the enclosed notice, sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the State of Illinois is class representative for all public agencies and political subdivisions in Illinois. The Attorney General is counsel of record, with full responsibility for prosecution of this action. In this connection you may have already supplied information to the Attorney General's office.

The notice of class action summarizes the allegations of the complaint and sets forth the terms of the settlement that has been reached with one of the defendants, Emhart Corporation, which manufactures hardware under the brand names "Corbin" and "Russwin." The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court following approval of the settlement.

If you do not request exclusion by advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by the Attorney General.

If you have any questions, please contact Special Assistant Attorney General, Lee A. Freeman, Jr., One IBM Plaza - Suite 3200, Chicago, Illinois 60611 (Telephone (312) 467-6540).

Very truly yours,

William J. Scott

WILLIAM J. SCOTT
Attorney General

Ex. 4

THEODORE L. SENDAK
ATTORNEY GENERAL

STATE OF INDIANA
ATTORNEY GENERAL
INDIANAPOLIS
46204

March 24, 1976

RE: Master Key Antitrust Litigation
M.D.L. Docket No. 45
United States District Court
District of Connecticut

Dear Sir:

On June 12, 1970, the Attorney General of Indiana initiated an anti-trust action on behalf of the State of Indiana, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions organized under Indiana law against four manufacturers of finished hardware products. This action is pending in the United States District Court for the District of Connecticut under the caption State of Indiana v. Emhart Corp., Eaton Corp., Sargent & Co., and Ilco Corp., No. 14,148.

As explained in the enclosed notice, being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the State of Indiana is class representative for all public agencies and political subdivisions in Indiana. The Attorney General is counsel of record, with full responsibility for prosecution of this action. In this connection, you may have already supplied information to this office.

The notice of class action summarizes the allegations of the complaint and sets forth the terms of the settlement that has been reached with one of the defendants, namely, the Emhart Corporation, which manufactures hardware under the brand names of Corbin and Russwin. The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court at a later time if the Court approves the settlement.

If you do not request exclusion by directly advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by the Attorney General.

If you have any questions, please contact Assistant Attorney General Darrel K. Diamond, 219 State House, Indianapolis, Indiana 46204 telephone (317) 633-4725.

Yours truly,

Theodore L. Sendak

THEODORE L. SENDAK
Attorney General of Indiana

TLS:sf

Ex. 5

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

March 22, 1976

Re: Master Key Antitrust Litigation,
M.D.L. Docket No. 45

Dear Sir:

Pursuant to Minn. Stat. § 325.8021 (1974), I initiated an antitrust damage action against four manufacturers of finish hardware products on behalf of the State of Minnesota, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions organized under Minnesota law. The action is pending in the United States District Court for the District of Connecticut under the caption State of Minnesota v. Emhart Corp., Eaton Corp., Sargent & Co. and Ilco Corp., No. 14,233.

As explained in the enclosed notice, being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the State of Minnesota is class representative for all public agencies and political subdivisions in Minnesota. The Attorney General is counsel of record, with full responsibility for prosecution of this action. In this connection you may have already supplied information to this office.

The notice of class action summarizes the allegations of the complaint and sets forth the terms of the settlement that has been reached with one of the defendants, Emhart Corporation, which manufactures hardware under the brand names Corbin and Russwin. The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court following approval of the settlement.

If you do not request exclusion by advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by the Attorney General.

If you have any questions, please contact Special Assistant Attorney General, Lee A. Freeman, Jr., One IBM Plaza - Suite 3200, Chicago, Illinois 60611 (Telephone No. (312) 467-6540.

Very truly yours,

Warren Spannaus

WARREN SPANNAUS
Attorney General

WS:cl
Enclosure

Ex. 6

STANLEY D. STEINBORN
Deputy Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

Re: Master Key Antitrust Litigation
M.D.L. Docket No. 45

Dear Sir:

As Attorney General, I have initiated an antitrust damage action against four manufacturers of finish hardware products on behalf of the State of Michigan, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions organized under state law. The action is pending in the United States District Court for the District of Connecticut under the caption State of Michigan v. Emhart Corp., Eaton Corp., Sargent & Co. and Ilco Corp., No. I4,233.

As explained in the enclosed notice, being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the State of Michigan is class representative for all public agencies and political subdivisions in Michigan. The State Attorney General is counsel of record, with full responsibility for prosecution of this action. In this connection you may have already supplied information to this office.

The notice of class action summarizes the allegations of the complaint and sets forth the terms of the settlement that has been reached with one of the defendants, Emhart Corporation, which manufactures hardware under the brand names Corbin and Russwin. The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court following approval of the settlement.

If you do not request exclusion by advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by the Attorney General.

If you have any questions, please contact Special Assistant Attorney General, Lee A. Freeman, Jr., One IBM Plaza - Suite 3200. Chicago, Illinois 60611 (Telephone No. (312) 467-6540).

Very truly yours,

Frank J. Kelley

FRANK J. KELLEY
Attorney General

Enclosure

Ex. 7

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA. 17120

ROBERT P. KANE
ATTORNEY GENERAL

Re: Master Key Antitrust Litigation
M.D.L. Docket No. 45

Dear Sir:

Pursuant to the Attorney General's duties as chief law enforcement officer of Pennsylvania, this Office has brought an antitrust damage action against four manufacturers of finish hardware products on behalf of the Commonwealth of Pennsylvania, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions organized under Pennsylvania law. The action is pending in the United States District Court for the District of Connecticut under the caption Commonwealth of Pennsylvania v. Emhart Corp., Eaton Corp., Sargent & Co. and Ilco Corp., No. 14, 191.

As explained in the enclosed notice, sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Commonwealth of Pennsylvania is class representative for all public agencies and political subdivisions in Pennsylvania. The Attorney General is counsel of record, with full responsibility for prosecution of this action. In this connection you have already supplied information to the Attorney General's Office.

The notice of class action summarizes the allegation of the complaint and sets forth the terms of the settlement that had been reached with one of the defendants, Emhart Corporation, which manufactures hardware under the brand names "Corbin" and "Russwin." The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court following approval of the settlement.

If you do not request exclusion by advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by the Attorney General.

If you have any questions, please contact Special Assistant Attorney General, Lee A. Freeman, Jr. One IBM Plaza - Suite 3200, Chicago, IL 60611 (Telephone No. 312 467-6540).

Very truly yours,

Robert P. Kane

Enclosure

Ex. 8

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHAUNCEY H. BROWNING, JR.
ATTORNEY GENERAL

RE: Master Key Antitrust Litigation,
M.D.L. Docket No. 45

Dear Sir:

My office has initiated an antitrust damage action against four manufacturers of finish hardware products on behalf of the State of West Virginia, its agencies, municipalities, counties, school districts, hospitals and other political subdivisions organized under West Virginia law. The action is pending in the United States District Court for the District of Connecticut under the caption State of W.Va. v. Emhart Corp., Eaton Corp., Sargent & Co. and Ilco Corp., No. 15,038.

As explained in the enclosed notice, being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure, the State of West Virginia is class representative for all public agencies and political subdivisions in West Virginia. I am counsel of record, with full responsibility for prosecution of this action. In this connection, you may have already supplied information to this office.

The notice of class action summarizes the allegations of the complaint and sets forth the terms of the settlement that has been reached with one of the defendants, Emhart Corporation, which manufactures hardware under the brand names Corbin and Russwin. The settlement fund will be distributed among class members in accordance with plans to be submitted to the District Court following approval of the settlement.

If you do not request exclusion by advising the Clerk of the Court, as provided in the attached notice, you will be deemed a member of the class represented by my office.

If you have any questions, please contact Special Assistant Attorney General, Lee A. Freeman, Jr., One IBM Plaza - Suite 3200, Chicago, Illinois 60611 (Telephone No. (312) 467-6540).

Very truly yours,

Chauncey H. Browning, Jr.

CHAUNCEY H. BROWNING, JR.
ATTORNEY GENERAL

Ex. 9

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing NOTICE OF FILING, together with documents referred to therein, was served upon all counsel of record by mailing a copy thereof this 28th day of April, 1976.

Lee Framme Jr

(459)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST)
) M.D.L. Docket No. 45
LITIGATION)

NOTICE OF APPEARANCE

Previously, Samuel H. Seymour of Seymour & Patton, Suite 702, 1225 Connecticut Avenue, N.W., Washington, D.C. 20036, and Joseph D. Tydings of Danzansky, Dickey, Tydings, Quint & Gordon, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036, jointly filed a Notice of Appearance and Intention to Appear on behalf of numerous clients who are members of the private builder-owner class in the above-captioned litigation.

PLEASE TAKE NOTICE that the firm of Seymour & Patton hereby withdraws its appearance, and that the clients on whose behalf the aforementioned Notice of Appearance and Intention to Appear was filed consent to the withdrawal and desire that Samuel H. Seymour continue and that the firm of Law Offices of Samuel H. Seymour be substituted for Seymour & Patton as their co-counsel with Joseph D. Tydings and Danzansky, Dickey, Tydings, Quint & Gordon, in the Master Key Antitrust Litigation, effective May 1, 1976. Accordingly, the firm of Law Offices of Samuel H. Seymour hereby enters its appearance, effective May 1, 1976, as co-counsel of record with Danzansky, Dickey, Tydings, Quint and Gordon in the above-captioned litigation.

PLEASE TAKE FURTHER NOTICE that the address of Law Offices of Samuel H. Seymour remains as Suite 702, 1225 Connecticut Avenue, N.W., Washington, D.C. 20036 and the telephone number remains as (202) 452-1711.

Respectfully submitted,

Samuel H. Seymour

LAW OFFICES OF SAMUEL H. SEYMOUR
Suite 702
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 452-1711

Joseph D. Tydings (SHS)

DANZANSKY, DICKEY, TYDINGS,
QUINT & GORDON
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 331-8700

459a

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: MASTER KEY)
)
ANTITRUST LITIGATION) M.D.L. DOCKET NO. 45

NOTICE OF APPEARANCE
AND INTENTION TO APPEAR

Each of the parties listed on the attached Exhibit "A" is a member of the private builder-owner class, as described in the Notice of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware, which class was certified by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

The undersigned counsel hereby notify the Court that they have been specially retained by the parties listed on the attached Exhibit "A" to represent their interests in the above-captioned litigation.

The undersigned counsel also hereby notify the Court that they intend to appear at the hearing set to consider the fairness and adequacy of the proposed settlement in the above-captioned litigation, as described in the Notice of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware, which hearing is scheduled for Wednesday, June 2, 1976, before the Honorable M. Joseph Blumenfeld, United States District Judge for the

District of Connecticut, at 10:00 o'clock a.m., in the North Courtroom of the United States Courthouse, 450 Main Street, Hartford, Connecticut.

Respectfully submitted,

Samuel H. Seymour

Law Offices of
SAMUEL H. SEYMOUR
1225 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 452-1711

Joseph D. Tydings (SHS)
Joseph D. Tydings

DANZANSKY, DICKEY, TYDINGS,
QUINT & GORDON
1120 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 331-8700

May 12, 1976

Exhibit "A"

Barcroft View Associates
c/o Kay Management Co.
8720 Georgia Avenue
Silver Spring, Maryland 20910

Kay Construction Company
c/o Kay Management Co.
8720 Georgia Avenue
Silver Spring, Maryland 20910

Parklawn Associates
c/o Kay Management Co.
8720 Georgia Avenue
Silver Spring, Maryland 20910

Suitland Associates
c/o Kay Management Co.
8728 Georgia Avenue
Silver Spring, Maryland 20910

Village Square North Associates
c/o Kay Management Co.
8720 Georgia Avenue
Silver Spring, Maryland 20910

Village Square Wheaton Sec. I
c/o Kay Management Co.
8720 Georgia Avenue
Silver Spring, Maryland 20910

Village Square Wheaton Sec. II
c/o Kay Management Co.
8720 Georgia Avenue
Silver Spring, Maryland 20910

Metropolitan Building
c/o Kay Management Co.
8720 Georgia Avenue
Silver Spring, Maryland 20910

Lawrence N. Brandt
t/a Walter Reed Inn
4201 Connecticut Avenue, N.W.
Washington, D. C.

Cole Spring Apartments Venture
c/o Lawrence N. Brandt & Company
4201 Connecticut Avenue, N.W.
Washington, D. C.

Colesville Towers Joint Venture
c/o Lawrence N. Brandt & Company
4201 Connecticut Avenue, N.W.
Washington, D. C.

Connecticut Avenue Limited Partnership
c/o Landow & Company
4710 Bethesda Avenue
Bethesda, Maryland 20014

Prospect House Joint Venture
c/o Landow & Company
4710 Bethesda Avenue
Bethesda, Maryland 20014

Park Sutton Associates
c/o Landow & Company
4710 Bethesda Avenue
Bethesda, Maryland 20014

4201 Connecticut Avenue Associates
c/o Landow & Company
4710 Bethesda Avenue
Bethesda, Maryland 20014

2829 Connecticut Avenue Associates
c/o Landow & Company
4710 Bethesda, Avenue
Bethesda, Maryland 20014

Colonnade Joint Venture
c/o Landow & Company
4710 Bethesda Avenue
Bethesda, Maryland 20014

Chase Plaza Venture
c/o Landow & Company
4710 Bethesda Avenue
Bethesda, Maryland 20014

Bristol House Joint Venture
c/o Landow & Company
4710 Bethesda Avenue
Bethesda, Maryland 20014

Marquis Limited Partnership
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Berwyn House Joint Venture
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Leesburg Gardens Joint Venture
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Bladensburg Village Limited Partnership
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Merrifield Village Joint Venture
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Merrifield Village Joint Venture No. 1
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Merrifield Village Joint Venture No. 2
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Merrifield Village Joint Venture No. 3
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Merrifield Village Joint Venture No. 4
c/o Bernard B. Lubcher
8720 Georgia Avenue
Silver Spring, Maryland 20910

Hanson Arms Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Kings Gardens Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

First Powder Mill Village Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Second Powder Mill Village Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Mt. Vee Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Surrey Square Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Orleans House Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Bonnie View Village Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Lafayette Joint Venture
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Vista Park Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Annandale Terrace Apartments
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

LaSalle Park Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

LaSalle Park Associates, Sect. 2
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Laurel Park Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Shadyside Gardens Joint Venture
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Wayne Manchester
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Friendship Properties
Suite 1000 Chevy Chase Bldg.
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Highland House West Limited Partnership
Suite 1000 Chevy Chase Bldg.
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

High Street Associates
Suite 1000 Chevy Chase Bldg.
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Suburban Hill Joint Venture
Suite 1000 Chevy Chase Bldg.
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

General Realty Ventures
Suite 1000 Chevy Chase Bldg.
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Nathan Landow
LANDOW & CO.
4710 Bethesda Avenue
Bethesda, Maryland 20014
Trading as: The Capitol House; The Imperial House; The Landow Building; The Seasons; The Promenade.

LANDOW & BRANDT PARTNERSHIP
4710 Bethesda Avenue
Bethesda, Maryland 20014
Trading as: Arlington House; Wakefield Towers.

Barrett Country Club Estates Company

Allerville Arms, Inc.

Trio Apartments, Inc.

Hazel Towers, Inc.

Arlyne Gardens, Inc.

Crosley Terrace Company

Palmer Gardens, Inc.

Windsor Terrace, Inc.

Colony Manor Associates

Fulton Terrace Associates

The Whitney, Inc.

Coliseum Park Apartments Company

Daniel Webster Company

Congress Gardens, Inc.

Woodcliff Gardens, Inc.

Aero Gardens, Inc.

Boulevard Estates, Inc.

Oliver Gardens, Inc.

Montgomery House, Inc.

Hamilton Gardens, Company

Valentine Gardens, Co., Inc.

Floral Park, Inc.

Floral Park Section II Inc.

South Road Construction Corp.

Yellowstone Shopping Center Company

Redmont Sales Company

Katz, Ladner & Orlian (No. 1)

Katz, Ladner & Orlian (No. 2)

Arlit Flushing Associates

Randall Gardens Company

Briar Hill Apartments Company

Carole Gardens, Inc.

Colony Apartments Company

Crestwood Operating Company

86th Street Holding Company

Caldwell Holding Company

Cambridge Holding Company

Greenwood Holding Company

Midtown Holding Company

Park Holding Company

River Holding Company

Stratford Holding Company

York Holding Company

Strawberry Hil. Company

Strawberry Hill No. II Co.

Pelway Realty Company

209 East 56th Street Company

Harridge House Associates

235 East 57th Street Company

310 East 70th Street Company

315 East 70th Street Company

Drake House Associates

150 East 58th Street Associates

D & D Associates

H.H. Associates

178 East 71st Street Corp.

Tandy & Allen Associates, Inc.

305 West 70th Street Corp.

Harrison Towers Corporation

Israel Discount Bank, Ltd.

S.J. Landau Corporation (770 Lexington Avenue, New York City)

Landau-Banker Realty Corp. (Two Lincoln Square, New York City)

S.J. Landau Corporation (400 East 55th Street, New York City)

S.J. Landau Corporation (69 West 9th Street, New York City)

345 East 56th Street Corp.

100 West 57th Street Associates

Third Avenue & 35th Street Associates

Psaty & Fuhrman, Inc.

Jonathan Woodner Co.

Seidman-Soling Buildings Inc.

Kibel Building Co., Inc.

Sam Minskoff & Sons

Lakewood House, Inc.

Arkansas Hotel Corp.

HRH Construction Corporation

Savoy Construction Corporation

(4596

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: MASTER KEY)
)
ANTITRUST LITIGATION) M.D.L. DOCKET NO. 45

NOTICE OF APPEARANCE
AND INTENTION TO APPEAR

Each of the parties listed on the attached Exhibit "A" is a member of the private builder-owner class, as described in the Notice of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware, which class was certified by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

The undersigned counsel hereby notify the Court that they have been specially retained by the parties listed on the attached Exhibit "A" to represent their interests in the above-captioned litigation.

The undersigned counsel also hereby notify the Court that they intend to appear at the hearing set to consider the fairness and adequacy of the proposed settlement in the above-captioned litigation, as described in the Notice of Class Action and Partial Settlement With Respect to Litigation Involving Finish Hardware, which hearing is scheduled for Wednesday, June 2, 1976, before the Honorable M. Joseph Blumenfeld, United States District Judge for the

District of Connecticut, at 10:00 o'clock a.m., in the North Courtroom of the United States Courthouse, 450 Main Street, Hartford, Connecticut.

Respectfully submitted,

Samuel H. Seymour

SEYMOUR & PATTON

Suite 702
1225 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 452-1711

Joseph D. Tydings (SHP)

DANZANSKY, DICKEY, TYDINGS,
QUINT & GORDON

1120 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 331-8700

EXHIBIT "A"

Grand Southern Investment Company
4600 S. Four Mile Run Drive
Arlington, Virginia

Thayer Avenue Development Company
4600 S. Four Mile Run Drive
Arlington, Virginia

Nivel Conduit, Inc.
4600 S. Four Mile Run Drive
Arlington, Virginia

Colonial Investment Company
4600 S. Four Mile Run Drive
Arlington, Virginia

Washington Science Center Associates
4600 S.. Four Mile Run Drive
Arlington, Virginia

Rose Levin
c/o Wagman Construction Co.
4600 S. Four Mile Run Drive
Arlington, Virginia

Jerry Wolman
11700 Old Columbia Pike
Suite 219
Silver Spring, Maryland 20904

Jerry Wolman Trading As:

Blue Ridge Manor Apartments
Bear Creek Apartments
Cavalier Apartments
Calvert Hall Apartments
Chestnut Hall Apartments
Claridge House
Clearview Towers
Country Manor Apartments
Dennis Grove Apartments
Dodge Park Apartments
Dodge Park Post Office
Dodge Park View
Easley House
Edsal Gardens
Executive Office Building
Fairmont Garden Apartments
Federal Office Building
1400 Fenwick
Forest Village Apartments
Fort Stanton Apartments

Jerry Wolman Trading As: (Continued)

Fort Ward Towers
Fountain Green Apartments
Fox Croft Apartments
Franklin Square Office Building
Georgian Towers
Glen Ross Apartments
Hampshire Towers
Hanover Hills Apartments
Helfrich Springs Apartments
Highview Apartments
Hillbrook Terrace
Imperial Building
John Hancock Center (Office Building)
John Hancock Center (Apartments)
Maryland Farms
Overlook Garden Apartments
Penn Brooke Terrace
Penn Garden Apartments I
Penn Garden Apartments II
Presidential Building
Starcrest Apartments
Silver Hill Apartments
Stratford Motor Lodge
Summit Hill Apartments
Sun-Crest Apartments
Sun View Gardens
Trevose Square
Toledo Plaza
Valley Park
Vermont Building
White Oak Gardens
Willow Brooke Apartments
Wisconsin Building
Park Kenn Apartments
500 North Michigan Building
The Spectrum
Parkway Apartments
Sunview Apartments

Metro Investment & Development Co.
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Country Club Towers Association Limited Partnership
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Eton Towers Joint Venture
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Fernwood Joint Venture
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

First Braebrook Village Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Second Braebrook Village Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

First Lansdowne Village Associates
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

LaSalle Park Associates Limited Partnership
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Munson Hill Towers Joint Venture
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Oglethorpe House Associated Limited Partnership
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Springfield Gardens Joint Venture
8401 Connecticut Avenue
Chevy Chase, Maryland

Windsor House Joint Venture
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Newport Resort Motel, Inc.
16701 Collins Ave.
Miami Beach, Florida

University Towers Joint Venture
1010 Arcola Avenue
Silver Spring, Maryland 20902

University Towers Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

Woodwinds Section I Joint Venture
1010 Arcola Avenue
Silver Spring, Maryland 20902

Woodwinds Section II Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

Woodwinds Section III Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

Silver Spring Plaza Associates
1010 Arcola Avenue
Silver Spring, Maryland 20902

Columbia Towers Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

Westlake Park Limited Partnership - Building A
1010 Arcola Avenue
Silver Spring, Maryland 20902

Westlake Park Limited Partnership - Building B
1010 Arcola Avenue
Silver Spring, Maryland 20902

Hewitt Gardens North Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland

Hewitt Gardens Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

BBC Joint Venture
1010 Arcola Avenue
Silver Spring, Maryland 20902

611 Park Avenue Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

Green Valley Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

Penn View Limited Partnership
1010 Arcola Avenue
Silver Spring, Maryland 20902

Glenmont Hills Associates
1010 Arcola Avenue
Silver Spring, Maryland 20902

Randolph Road Nursing Home
1010 Arcola Avenue
Silver Spring, Maryland 20902

Congressional Towers Limited Partnership #1
4400 East West Highway
Bethesda, Maryland

Congressional Towers Limited Partnership #2
4400 East West Highway
Bethesda, Maryland

Congressional Properties Limited Partnership
4400 East West Highway
Bethesda, Maryland

Landover Hou[illegible]ited Partnership
4400 East West[illegible]ghway
Bethesda, Maryland

Topaz House Limited Partnership
4400 East West Highway
Bethesda, Maryland

Rollins Park Limited Partnership, Section 2
4400 East West Highway
Bethesda, Maryland

Rollins Park Limited Partnership, Section 3
4400 East West Highway
Bethesda, Maryland

Rakusin & Becker, a Partnership, as Successor
in Interest to Merrimack Construction Corporation
4400 East West Highway
Bethesda, Maryland

Van Ness Properties
c/o Robert Silverman
35 Wisconsin Circle
Chevy Chase, Maryland 20015

Van Ness Properties II
c/o Robert Silverman
35 Wisconsin Circle
Chevy Chase, Maryland 20015

Van Ness Properties III
c/o Robert Silverman
35 Wisconsin Circle
Chevy Chase, Maryland 20015

Bell Associates
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Jack I. Bender & Sons
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Bernmil Associates
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

BGW Limited Partnership
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Blake Development Company
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Northwestern Development Company
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Rhode Island & M St. Associates
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

12th & L Street Limited Partnership
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Martin McCarthy
5101 River Road
Washington, D. C. 20016

Northwestern Development Company B
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036

Highland House Limited Partnership
Suite 1000 Chevy Chase Building
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Park Southern Company
Suite 1000 Chevy Chase Building
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Whitehall Apartments
Suite 1000 Chevy Chase Building
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Hampshire Investors
Suite 1000 Chevy Chase Building
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

Parkside Terrace Company
Suite 1000 Chevy Chase Building
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

70 S Associates
Suite 1000 Chevy Chase Building
5530 Wisconsin Avenue
Chevy Chase, Maryland 20015

First Liberty Road Limited Partnership
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Second Liberty Road Limited Partnership
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Third Liberty Road Limited Partnership
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

West Deer Park Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Branch Associates
1025 Connecticut, N.W.
Washington, D. C. 20036

Branch Associates, Sec. II
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Kenwood Associates, Sec. I
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Kenwood Associates, Sec. II
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Kenwood Associates, Sec. III
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Seminary Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

First Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Second Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Third Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Fourth Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Fifth Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Sixth Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Seventh Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Eighth Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Ninth Springhill Lake Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

North Shore Garden Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Pinetree Garden Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Riverdale Plaza Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Reistertown Apartments Venture
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Riverdale Terrace Associates
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Towson East Joint Venture
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Bonnie Ridge Associates Section 1
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Bonnie Ridge Associates Section 2
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Bonnie Ridge Associates Section 3
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Amherst College
AMherst, Massachusetts

20

463

United States District Court
District of Connecticut

FILED
MAY 14 9 22 AM '76
U.S. DISTRICT COURT
HARTFORD, CONN.

In Re Master Key Antitrust Litigation) M.D.L. Docket No. 45

Notice of Appearance and Intention
to Appear on June 2, 1976 and Oppose
in whole or in part Settlement Proceedings

To Master Key Litigation
Sylvester A. Markowski, Clerk
United States District Court
P. O. Box 636
Hartford, Connecticut 06101

Please take note that the undersigned attorneys hereby enter the appearance of the following members of the class in this action:

1. Exxon Corporation
800 Bell
Houston, Texas 77001

2. Esso Eastern Inc.
2401 So. Gessner
Houston, Texas 77042

3. Exxon Production Research Company
3120 Buffalo Speedway
Houston, Texas 77006

4. Esso Exploration Inc.
12,727 Kimberly Lane
Houston, Texas 77024

5. Esso Inter-America Inc.
396 Alhambra Circle
Coral Gables, Florida 33134

6. Jayven Inc.
1251 Avenue of the Americas
New York, New York 10020

7. Gilbarco, Inc.
7300 Friendly Road
Greensboro, North Carolina 27420

8. Exxon Nuclear Company, Inc.
777-106th Avenue, N.E.
Bellevue, Washington 98004

9. Exxon Research & Engineering Company
P. O. Box 101
Florham Park, New Jersey 07923

and hereby give notice of their intention to appear by counsel on June 2, 1976 and be heard, present evidence, and argue against the proposed settlement defined in your undated notice in the above matter, particularly as to the arbitrary, unjustified and unconscionable allocation of funds between the so-called classes and the attorneys fees and expenses claimed by attorneys for the class representatives.

HOWREY & SIMON
1730 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

(202) 872-8800

By: William Simon
Attorneys for above-named Class Members

Dated: May 12, 1976

(464)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	All Cases

LISTS OF CLASS MEMBERS THAT HAVE REQUESTED EXCLUSION FROM THE CLASS ACTIONS ON BEHALF OF PUBLIC ENTITIES

Pursuant to this Court's order of March 3, 1976, liaison counsel for plaintiffs files herein a list of those entities that have requested exclusion in all class actions on behalf of public entities.

Lee A. Freeman, Jr.

LEE A. FREEMAN, JR.
Co-liaison Counsel for Plaintiffs

FREEMAN, ROTHE, FREEMAN
& SALZMAN
One IBM Plaza - Suite 3200
Chicago, Illinois 60611
(312) 467-6540

DATED: May 13, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF ARIZONA, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,233

REQUESTS FOR EXCLUSION

School Districts:

Arlington School Dist. 47
Star Route Box 125
Arlington, Arizona 85322

Beaver Creek School Dist. 26
Rimrock-Lake Montezuma
Yavapai County, Arizona

Buckeye Elementary Schools
210 South 6th Street
Buckeye, Arizona 85326

Buckeye Union High School
902 Eason Avenue
Buckeye, Arizona 85326

Casa Grande Elementary Schools
1460 North Pinal Avenue
Casa Grande, Arizona 85227

Catalina Foothills School Dist.
1926 East River Road
Tucson, Arizona 85718

Cave Creek Elementary School District No. 93
P. O. Drawer 426
Cave Creek, Arizona 85331

Chino Valley School Dist. 51
Chino Valley, Arizona 86323

Eloy Elementary Schools
1011 North Sunshine Blvd.
Eloy, Arizona 85231

Toltec Elementary School
Rt. 1, Box 390
Eloy, Arizona 85231

Flowing Wells Public Schools
1444 West Prince Road
Tucson, Arizona 85705

Gila Bend Unified School Dist.
308 North Martin Avenue
Gila Bend, Arizona 85337

Glendale Elementary Schools
District No. 40
P.O. Box 247
Glendale, Arizona 85311

Joseph City Public Schools
P.O. Box 8
Joseph City, Arizona 86032

Mayer Public Schools Dist. 43
P.O. Box 188
Mayer, Arizona 86333

Naco School Dist. 23
P.O. Box 397
Naco, Arizona 85620

Lochiel School Dist. 9
P.O. Box 1150
Nogales, Arizona 85621

Northern Yuma County Union
High School District
P.O. Box 1129
Parker, Arizona 85344

Payson Public Schools
P.O. Box 919
Payson, Arizona 85541

Isaac Elementary Schools
District No. 5
1701 North 35th Avenue
Phoenix, Arizona 85009

Wilson Elementary School
District No. 7
2411 East Buckeye Road
Phoenix, Arizona 85034

Pomerene Public School Dist. 64
Box 7
Pomerene, Arizona 85627

Combs School District 44
Rout 1, Box 33
Queen Creek, Arizona 85242

Vicksburg Elementary Dist.
Star Route 1, Box 58
Salome, Arizona 85348

Snowflake Unified School
District No. 5
P.O. Box 1100
Snowflake, Arizona 85937

Apache County High School Dist.
P.O. Box 790
Springerville, Arizona 85938

Tombstone School Dist. 1
Tombstone, Arizona 85638

Topock School Dist. 12
P.O. Box 7
Topock, Arizona 86436

Tanque Verde School Dist. 1
2300 North Tanque Verde Loop Road
Tucson, Arizona 85715

Walnut Grove Dist. 7
Kirkland, Arizona 86332

Whiteriver Elementary Dist. 20
Whiteriver, Arizona 85941

Wickenburg Unified School
District No. 9
P.O. Drawer 1418
Wickenburg, Arizona 85358

Winslow School Dist. 1
P.O. Box 580
Winslow, Arizona 86047

Yuma School Dist. 1
450 Sixth Street
Yuma, Arizona 85364

Municipalities:

Town of Chino Valley
P.O. Box 206
Chino Valley, Arizona 86323

Greenlee County
Clifton, Arizona 85533

City of Douglas
425 Tenth Street
Douglas, Arizona 85607

Town of Oro Valley
9040 North Oracle Road
Tucson, Arizona 85704

Town of Paradise Valley
Paradise Valley, Arizona 85253

Town of Payson
P.O. Box 575
Payson, Arizona 85541

Town of Youngtown
12028 Clubhouse Square
Youngtown, Arizona 85363

Counties:

County of Cochise
Bisbee, Arizona 85603

County of Greenlee
Box 908
Clifton, Arizona 85533

Yavapai County
Prescott, Arizona 86301

Yuma County
P.O. Box 1048
Yuma, Arizona 85364

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF CALIFORNIA, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 73-911-LTL

REQUESTS FOR EXCLUSION

School Districts:

Alameda Unified School Dist.
400 Grand Street
Alameda, California 94501

Alhambra City Schools
Fifteen West Alhambra Road
Alhambra, California 91801

Bret Harte Union High School Dist.
373 South Main Street
Angels Camp, Calfornia 95222

Edison School District
Route 5, Box 532X
Bakersfield, California 93307

Camptonville Union School
P.O. Box 274
Camptonville, California 95922

Etna Union School District
P.O. Box 490
Etna, California 96027

Vallecitos School District
5211 Fifth Street
Fallbrook, California 92028

Fall Creek School District
Copco Route
Hornbrook, California 96044

Midway School District
P.O. Bin J
Fellows, California 93224

Forestville Union School Di
6321 Highway 116
Forestville, California 95436

Fullerton Elementary School
1401 West Valencia Drive
Fullerton, California 92633

Gravenstein Union School Di
3840 Twig Avenue
Sebastopol, California

Grindley Union High School
300 East Spruce Street
Grindley, California 95948

Guadalupe Union School Dist.
1050 Peralta Street
Guadalupe, California 93434

Hughson Union High School Dist.
7419 East Whitmore
Hughson, California 95326

Rim of the World Unified
School District
P.O. Drawer 430
Lake Arrowhead, California 92352

Keppel Union School Dist.
35118 North 82nd Street East
Littlerock, California 95343

Los Flores School Dist.
Summit Star Route, Box 14
Hesperia, California 92345

Los Gatos Union School Dist.
Sar Route, Box 900
McKittrick, California 93251

Morongo Unified School Dist.
5715 Utah Trail
Twentynine Palms, California
92277

Mountain House School
3950 Mountain House Road
Tracy, California 95376

Citrus South Tule School Dist.
31374 Success Valley Drive
Porterville, California 92357

Redding School Dist.
1805 Sequoia Street
Redding, California 96001

Ready Springs Union School
District
P.O. Box 109
Rough and Ready, Cal. 95975

Spencer Valley School Dist.
Star Route No. 1
Santa Ysabel, Cal. 92070

Seeley Union Elementary School
P.O. Box 868
Seeley, California 93373

Sunnyvale Elementary School
District
750 East Arques Avenue
Sunnyvale, California 94088

Sierra Joint Union High School
33326 North Lodge Road
Tollhouse, California 93667

Vallecitos School District
5211 Fifth Street
Fallbrook, California 92028

Vallejo City School Dist.
211 Valle Vista
Vallejo, California 94590

Vineland School Dist.
Route 6, Box 317
Bakersfield, California 93307

Waugh School District
1060 Corona Road
Petaluma, California 94952

Institutions of Higher Education:

Ohlone College
43600 Mission Blvd.
Fremont, California 94537

Bakersfield College
1801 Panorama Drive
Bakersfield, California

Porterville College
900 South Main Street
Porterville, California

Municipalities:

City of Albany
1248 Soland Avenue
Albany, California 94716

City of Amador City
Amador City, California 95601

City of Belvedere
450 San Rafael Avenue
Belvedere, California 94920

City of Daly City
Sullivan Avenue and 90th Street
Daly City, California 94015

City of El Monte
11333 Valley Boulevard
El Monte, California 91734

City of Exeter
P.O. Box 1029
Visalia, California 93277

City of Farmersville
P.O. Box 1029
Visalia, California 93277

City of San Fernando
117 MacNeil Street
San Fernando, Cal. 91340

City of Stanton
1151 Dove Street
Newport Beach, Cal. 92660

City of Temple City
5938 North Kauffman Ave.
Temple City, Cal. 91780

City of Ukiah
203 South School Street
Ukiah, California 95482

City of Weed
P.O. Box 470
Weed, California 96094

City of Woodlake
P.O. Box 1029
Visalia, California 93277

Fire Protection Districts:

Encinitas Fire Protection Dist.
415 Second Street
Encinitas, California 92040

Lakeside Fire Protection Dist.
9726 Riverview Avenue
Lakeside, California

Lemon Grove Fire District
Lemon Grove, Cal. 92045

Water Districts:

Olivenhain Municipal Water Dist.
1966 Olivenhain Road
Encinitas, Cal. 92024

Counties:

Plumas County
Courthouse, P.O. Box 388
Quincy, California 95971

Sonoma County

Hospitals:

Mark Twain Hospital Dist.
P.O. Box 667
San Andreas, California 95249

West Side Community Hospital
District
151 South Hwy. 33
Newman, California 95360

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF COLORADO, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 75-382

REQUESTS FOR EXCLUSION

School Districts:

Delta County Joint School District No. 50
Route 1 - Box 127
Delta, Colorado 81416

Haxtun Schools - District Re-2J
Haxtun, Colorado 80731

Lamar Public Schols
School District Re-2
210 West Pearl Street
Lamar, Colorado 81052

School District No. 20
U.S. Air Force Academy,
Colorado 80840

School District Re-50
Wiggins, Colorado 80654

School District No. Re-2
Steamboat Springs Public Schools
P.O. Box 1177
Steamboat Springs, Colorado

Thompson School District R2-J
201 South Lincoln Avenue
Loveland, Colorado 80537

Counties:

Kiowa County
Eads, Colorado 81036

Municipalities:

City of Grand Junction
250 North Fifth Street
Grand Junction, Colorado 81501

City of Leadville
800 Harrison Avenue
Leadville, Colorado 80461

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF CONNECTICUT, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,147

REQUESTS FOR EXCLUSION

Municipalities:

Town of Beacon Falls
366 Main Street
Ansonia, Connecticut 06401

Town of Bridgewater
Bridgewater, Connecticut 06752

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF FLORIDA, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,231

REQUESTS FOR EXCLUSION

Municipalities:

Town of Lantana
P.O. Box 3043
Lantana, Florida 33462

Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea,
Florida 33308

City of Lighthouse Point
2200 N.E. 38th Street
Lighthouse Point, Florida 33064

City of Pensacola
Pensacola, Flordia

City of Pompano Beach
101 S.W. 1st Avenue
Pompano Beach, Florida 33[illegible]

Counties:

Wakulla County
Crawfordville, Florida 32327

Institutions of Higher Education:

Florida Keys Community College
Key West, Florida 33040

Hospitals:

Florida Keys Memorial Hospital
Stock Island
Key West, Florida 33040

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF ILLINOIS, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 15,262

REQUESTS FOR EXCLUSION

School Districts:

Bradley-Bourbannais Community High School Dist. 307
North Street and Center Ave.
Bradley, Illinois 60915

Brownstown Community Unit Schools Dist. 201
Brownstown, Illinois 62418

Community Unit School Dist. 300
405 North Sixth Street
Dundee, Illinois 60118

Deer Creek-Mackinaw Dist. 701
Mackinaw, Illinois

Elementary School Dist. 12
1100 North Seventh Street
Breese, Illinois 62230

Elwood Consolidated School District 203
Elwood, Illinois 60421

Flora Community Unit School District 35
Flora, Illinois 62839

Forrest-Strawn-Wing School District
Livingston County Community Unit No. 2
Forrest, Illinois 61741

Frankfort Community Consolidated School Dist. 157C
Hickory & Oregon
Frankfort, Illinois 60423

Germantown Elementary School District 60
Germantown, Illinois 62245

Green Valley Community Consolidated Grade School District 695
Green Valley, Illinois 61534

Harvey Public Schools Dist. 152
152nd and Myrtle Avenue
Harvey, Illinois 60426

Homer Community Consolidated Schools
Route 1, Box 367
Lockport, Illinois 60441

Homewood-Flossmoor Community High School Dist. 233
999 Kedzie Avenue
Flossmoor, Illinois 60422

Metropolis Community High School Dist. 20
1004 Catherine Street
Metropolis, Illinois 62960

Milledgeville Public Schools Unit Dist. 312
Milledgeville, Illinois 61051

Newark Community Consolidated Grade School Dist. 66
Newark, Illinois 60541

Northwestern Community Unit School Dist. 2
Palmyra, Illinois 62674

Oak Lawn-Hometown Public Schools Dist. 123
4201 West 93rd Street
Oak Lawn, Illinois 60453

Peoria Public Schools
3202 North Wisconsin Ave.
Peoria, Illinois 61603

Sheldon Unit School Dist. 5
Sheldon, Illinois 60966

St. Rose School Dist. 14-15
Rural Route 1
Breese, Illinois 62230

Sullivan Community Unit Schools Dist. 300
Sullivan, Illinois 61951

Thornton Township High Schools
151st Street and Broadway
Harvey, Illinois 60426

Superintendent Dist. 702
Tremont Community Schools
Tremont, Illinois 61568

Township High School Dist.
1040 Park Avenue
Highland Park, Illinois 60035

Washington Community High School Dist. 308
115 Bondurant Street
Washington, Illinois 61571

Municipalities:

Village of Barrington
206 South Hough Street
Barrington, Illinois 60010

City of Carmi
Carmi, Illinois 62821

The City of Galena
312-1/2 North Main Street
Galena, Illinois 61036

Village of Harwood Heights
7343 West Lawrence Avenue
Harwood Heights, Illinois 60656

City of Mattoon
Mattoon, Illinois 61938

City of Sullivan
Sullivan, Illinois 61951

Village of Vernon Hills
1893 Sheridan Road
Highland Park, Illinois 60035

Hospitals:

Community General Hospital
202 East Fifth Street
Sterling, Illinois 61081

Community Memorial Hospital
Monmouth, Illinois 61462

Perry Memorial Hospital
530 Park Avenue East
Princeton, Illinois 61356

Institutions of Higher Education:

Carl Sandburg College
2232 South Lake Storey Road
Galesburg, Illinois 61401

Highland Community College
P.O. Box 320
Freeport, Illinois 61032

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF INDIANA, Plaintiffs, v. EMHART CORPORATION, ELTON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,148

REQUESTS FOR EXCLUSION

School Districts:

Baugo Community Schools
R.R. 3 Box 424 A
Elkhart, Indiana 46514

Brownsburg Community School Corporation
Brownsburg, Indiana 46112

Cannelton City Schools
109 East Third
Cannelton, Indiana 47520

Linton-Stockton School
Linton, Indiana 47441

Linton-Stockton School Corporation
Linton, Indiana 47441

Loogootee Community School Corporation
P. O. Box 282
Loogootee, Indiana 47553

The Metropolitan School Dist. of Warren Township
9301 East 18th Street
Indianapolis, Indiana 46229

Metropolitan School District of Washington Twp.
1605 East 96th Street
Indianapolis, Indiana 46240

Orleans Community Schools
Marley Avenue
Orleans, Indiana 47452

Speedway Public Schools
5335 West 25th St.
Speedway, Indiana 46224

The Vincennes Community School Corporation
300 N. 6th St.
Vincennes, Indiana 47591

Municipalities:

Town of Bloomfield, Indiana
44 South Franklin St.
Bloomfield, Indiana 47424

Union County
21 W. Union St.
Liberty, Indiana

Town of Walkerton
510 Roosevelt Road
Walkerton, Indiana 46574

Hospitals:

Putnam County Hospital
330 Greenwood Avenue
Greencastle, Indiana 46135

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF MICHIGAN, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,233

REQUESTS FOR EXCLUSION

School Districts:

Bedford Public Schools
8486 Douglas Rd.
Temperance, Michigan 48182

Bessemer Twp. School Distri
Ramsay, Michigan 49959

Coldwater Community Schools
15 E. Washington St.
Coldwater, Michigan 49036

The Glen Lake Community Sch s
Maple City, Michigan 49664

Grosse Ile Twp. Schools
23270 E. River Road
Grosse Ile, Michigan 48138

Harbor Springs Public Schoo
327 East Bluff Drive
Harbor Springs, Michigan 49740

School Dist. of City of
Iron Mountain
Iron Mountain, Michigan 49801

Ironwood Area Schools of
Gogebic County
Ironwood, Michigan 48838

Ishpeming School Dist. No. 1
320 East Division St.
Ishpeming, Michigan 49849

Kingston Community Schools
Kingston, Michigan 48741

Lakeshore Public Schools
5771 Cleveland Avenue
Stevensville, Michigan

Mackinaw City Public Schools
Mackinaw City, Michigan 49

Mason Consolidated Schools
Erie, Michigan 48133

Midland Public Schools
600 E. Carpenter St.
Midland, Michigan 48640

Whitehall District Schools
Whitehall, Michigan 49461

School Districts:

Morenci Area Schools
Morenci, Michigan 49256

North Adams Public Schools
North Adams, Michigan 49262

Portage Twp. Schools
201 E. Houghton Ave.
Houghton, Michigan 49931

Quincy Community Schools
Quincy, Michigan

School Dist. of the City of
Traverse City
326 State St.
Traverse City, Michigan 49684

White Pine School District
White Pine, Michigan 49971

Napoleon School District
Napoleon, Michigan 49261

Oxford Area Community Schools
133 N. Coats Rd.
Oxford, Michigan 48051

Posen Cons. School Dist. No. 9
Posen, Michigan 49776

School Dist. of the City of
River Rouge
1411 Coolidge Highway
River Rouge, Michigan 48218

Ubly Community Schools
2020 Union St.
Ubly, Michigan 48475

Woodhaven School District
19435 Cadillac School Dr.
Romulus, Michigan 48174

Municipalities:

City of Alden
Alden, Michigan 49612

City of Escanaba
Escanaba, Michigan 49829

City of Riverview
17700 Fort St.
Riverview, Michigan 48192

City of Bronson
141 S. Matteson St.
Bronson, Michigan 49028

City of Gaylord
225 W. Main St.
Gaylord, Michigan 39735

City of Zilwaukee
319 Tittabawassee (Zilw)
Saginaw, Michigan 48604

Counties:

Oceana County
P. O. Box 14
Hart, Michigan 49420

Hospitals:

Crystal Falls Community Hospital
Michigan Ave. & Third St.
Crystal Falls, Michigan 49920

Institutions of Higher Education:

Bay de Noc Community College
Escanaba, Michigan 49829

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF MINNESOTA, Plaintiffs, v. EMHART CORPORATION, ELTON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,233

REQUESTS FOR EXCLUSION

School Districts:

Anoka-Hennepin Independent School District No. 11
P. O. Box 191
Anoka, Minnesota 55303

Independent School District No. 726
Becker, Minnesota 55308

Browerville Public Schools
Independent Dist. No. 787
Browerville, Minnesota 56438

Hoffman Independent School District 265
Hoffman, Minnesota 56339

Independent School Dist. No. 181
300 Quince St.
Brainerd, Minnesota 56401

Independent School Dist. No. 378
Dawson, Minnesota 56232

Round Lake Public Schools
Independent School Dist. 516
Round Lake, Minnesota 56167

Battle Lake Public Schools
Independent District No. 5[illegible]
Battle Lake, Minnesota 56[illegible]

Bloomington Public Schools
Independent School Dist. N[illegible] 27
10025 Penn Ave. So.
Bloomington, Minnesota 55431

Heron Lake Public Schools
Independent School Dist. No. 3[illegible]
Heron Lake, Minnesota 56137

Independent School Dist. N[illegible] 1[illegible]
1087 Bidwell St.
West St. Paul, Minnesota 5511[illegible]

Mabel-Canton Public School
Independent Dist. No. 238
Mabel, Minnesota 55954

Independent School Dist. N[illegible] 4[illegible]
Argyle, Minnesota 56713

School Districts:

The Rochester Public Schools
Independent School Dist. No. 535
10 9-1/2 Street S.E.
Rochester, Minnesota 55901

East Grand Forks Public Schools
Independent School Dist. No. 595
East Grand Forks, Minn. 56721

Independent School Dist. No. 678
Greenbush, Minnesota 56726

Independent School Dist. No. 893
Echo, Minnesota 56237

Mentor Public Schools
Independent Dist. No. 604
Mentor, Minnesota 56736

Pelican Rapids Public School
Independent School Dist. No. 548
Pelican Rapids, Minnesota 56572

Willow River Area Schools
Independent School Dist. No. 577
Willow River, Minnesota 55795

Independent School Dist. No. 5
Thief River Falls, Minnesota
56701

Independent School Dist. No. 6
Fosston, Minnesota 56542

Jordan Community Schools
Independent School Dist. 717
Sunset Drive
Jordan, Minnesota 55352

Medford Public Schools
Independent Dist. No. 763
Medford, Minnesota 55049

Motley Public School
Independent School Dist. No. 4
Motley, Minnesota 56466

Verdi Public Schools
Independent School Dist. No. 4
Verdi, Minnesota 56179

Municipalities:

Arlington, Minnesota 55307

Barry, Minnesota 56210

Brewster, Minnesota 55119

Claremont, Minnesota 55924

Elkton, Minnesota 55933

Ely, Minnesota 55731

Fridley, Minnesota 55432

Hollandale, Minnesota 56045

Ivanhoe, Minnesota 56142

Kinbrae, Minnesota 56126

Lewiston, Minnesota 55952

Long Lake, Minnesota 55356

Backus, Minnesota 56435

Bayport, Minnesota 55003

Brownsdale, Minnesota 55918

Dodge Center, Minnesota 55927

Elmore, Minnesota 56027

Fairmont, Minnesota 56031

Grey Eagle, Minnesota 56336

Hoyt Lakes, Minnesota 55750

Kandiyohi, Minnesota 56251

Lancaster, Minnesota 56735

Lindstrom, Minnesota 55045

Minnetonka Beach, Minn. 55361

Municipalities:

City of Mountain Iron
Box 505
Mt. Iron, Minnesota 55768

Northome, Minnesota 5666[illegible]

Okabena, Minnesota 56161

Odessa, Minnesota 56276

Ormsby, Minnesota 56162

Ranier, Minnesota 56668

Roscoe, Minnesota 56371

Sherburn, Minnesota 56171

Stockton, Minnesota 5598[illegible]

Sunfish Lake, Minnesota 55075

Trommald, Minnesota 56480

Wanda, Minnesota 56294

West Concord, Minnesota 5[illegible]85

Counties:

Clay County
Moorhead, Minnesota 56560

Goodhue County
Red Wing, Minnesota 5506[illegible]

Isanti County
237 Second Ave., S.W.
Cambridge, Minnesota 55008

Pipestone County, Box 510
Pipestone, Minnesota 561[illegible]

Rock County
P. O. Box 100
Luverne, Minnesota 56156

Housing Authorities:

Housing & Redevelopment Authority
of Aitkin County
Aitkin, Minnesota 56431

Housing & Redevelopment Au[illegible]or
of St. Peter
1010 S. Fourth St.
St. Peter, Minnesota 5608[illegible]

Housing & Redevelopment Authority
of the City of Red Lake Falls
Red Lake Falls, Minnesota 56750

Housing & Redevelopment Au[illegible]or
of Sleepy Eye
Ross Park Homes
313 - 4th Ave., S.E.
Sleepy Eye, Minnesota 56[illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF KANSAS, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,546

REQUESTS FOR EXCLUSION

School Districts:

Unified District No. 570
119 West Washington
Arkansas City, Kansas 67005

Municipalities:

The City of Newton
120 East 7th Street
Newton, Kansas 67114

City of Pittsburg
4th and Pine Streets
Pittsburg, Kansas 66762

Hospitals:

Ness County Hospital
District No. 2
Ness City, Kansas 67560

Housing Authorities:

Housing Authority of the
City of Parsons
Parsons, Kansas 67357

The Housing Authority of the
City of Phillipsburg
302 West "F" Street
Phillipsburg, Kansas 67661

The Local Housing Authority
of the City of South
Hutchinson
441 North Washington
South Hutchinson, Kansas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF NEW YORK, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. L4,236

REQUESTS FOR EXCLUSION

School Districts:

East Rockaway, New York 11518

Gloversville Enlarged
School District
90 North Main Street
Gloversville, New York 12078

Hermon-DeKalb Central School
DeKalb Junction, New York 13630

Lyndonville Central School
Lyndonville, New York 14098

Riverhead Central School District
700 Osborne Avenue
Riverhead, New York 11901

Floral Park-Bellerose
Union Free School District
One Poppy Place
Floral Park, New York 11001

Hamburg Central School District
Hamburg, New York 14075

Keene Central School District
Keene Valley, New York 1294

Richburg Central School
Richburg, New York 14774

Draper Schools
Draper Avenue
Schenectady, New York 12306

Municipalities:

Village of Bronxville
200 Pondfield Road
Bronxville, New York 10708

Town of Chester
Chester, New York 10918

Municipalities:

Town of Copake
Copake, New York 12516

DeRuyter, New York 13052

Earlville, New York 13332

Town of Gorham
Box 108 D, R.D. #1
Stanley, New York 14561

Lisle, New York 13797

Stewart Manor, New York 11530

Town of Summit
Charlotteville, New York 12036

Willet, New York 13863

Village of Dansville
191 Main Street
Dansville, New York 14437

Town of Deerfield
656 Hewey Street
Utica, New York 13502

Groton, New York 13073

Henderson, New York 13650

Marathon, New York 13803

Town of Stockton
24 High Street
Cassadaga, New York 14718

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF OHIO, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,384

REQUESTS FOR EXCLUSION

School Districts:

Carey Exempted Village Schools
Carey, Ohio 43316

Fairless School Districts
11885 Navarre Road, S.W.
Navarre, Ohio 44662

Independence Public Schools
7733 Stone Road
Independence, Ohio 44131

Minster Local Schools
86 North Hanover Street
Box 175, R.R. 1
Minster, Ohio 45865

Tuslaw Local School District
P. O. Box 8,
14715 Churchfield St., N.W.
North Lawrence, Ohio 44666

Union Local School District
Route 1
Belmont, Ohio 43718

Municipalities:

City of Greenhills
1100 Winton Road
Greenhills, Cincinnati, Ohio
45218

Village of Lexington
38 South Park
Mansfield, Ohio 44902

Village of Piketon
Piketon, Ohio 45661

Housing Authorities:

Perry County Metropolitan Housing Authority
Senior Citizens Building
Crooksville, Ohio 43721

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
COMMONWEALTH OF PENNSYLVANIA, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,191

REQUESTS FOR EXCLUSION

School Districts:

Bradford Area School District
30 Congress St.
Bradford, Pennsylvania 16701

School District of Radnor Twp.
Wayne, Pennsylvania 19087

Penn Hills School District
12200 Garland Drive
Pittsburgh, Pennsylvania 15235

Redbank Valley School District
Route No. 3, Box 224
New Bethlehem, Pennsylvania 16

Municipalities:

Borough of Fountain Hill
843 Clewell St.
Fountain Hill, Pennsylvania 18015

Borough of Red Lion
Center Square
Red Lion, Pennsylvania 17356

City of Sunbury
225 Market St.
Sunbury, Pennsylvania 17801

Borough of Wyomissing
Wyomissing, Penn. 19610

North Towanda Township
R.D. No. 1
Towanda, Pennsylvania 18848

Borough of Sellersville
140 E. Church St.
Sellersville, Penn. 18960

Borough of Tyrone
1100 Logan Avenue
Tyrone, Pennsylvania 16686

Institutions of Higher Education:

Butler County Community College
College Drive, Oak Hills
Butler, Pennsylvania 16001

Lehigh County Community Co[illegible]ge
2370 Main Street
Schnecksville, Penn. 18078

Housing Authorities:

Housing Authority of the City
of Bradford
2 Bushnell St.
Bradford, Penn. 16701

Housing Authority of the County
of Cumberland
Mt. Holly Springs, Penn. 1[illegible]65

Fulton County Housing Authority
Courthouse Annex I
McConnellsburg, Penn. 17233

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF WEST VIRGINIA, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 15,038

REQUESTS FOR EXCLUSION

School Districts:

Jackson County Schools
Ripley, West Virginia 25271

Randolph County Schools
Drawer 791
Elkins, West Virginia 26241

Municipalities:

Benwood, West Virginia 26031

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
STATE OF WISCONSIN, Plaintiffs, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,233

REQUESTS FOR EXCLUSION

School Districts:

Blair Public Schools
Blair, Wisconsin 54616

Central High School
Joint District No. 1
Salem, Wisconsin 53168

Kickapoo Area Schools
Joint District No. 8
Viola, Wisconsin 54664

Lancaster Community Schools
151-1/2 West Maple St.
Lancaster, Wisconsin 53813

Montello Schools
Joint District No. 1
Montello, Wisconsin 53949

Mukwonago Area Schools
423 Division St.
Mukwonago, Wisconsin 53149

New Holstein Public Schools
Joint School Dist. No. 5
1715 Plymouth Street
New Holstein, Wisconsin 53061

Plum City Schools
Joint School District No. 3
Plum City, Wisconsin 54761

Seymour Community Schools
Joint Dist. No. 4
10 Circle Drive
Seymour, Wisconsin 54165

Suring Public Schools
Joint School District No. 3
Suring, Wisconsin 54174

Joint 7 Westby Area Schools
Westby, Wisconsin 54667

Municipalities:

Delafield, Wisconsin 53018

Monona, Wisconsin 53716

South Milwaukee, Wisconsin 53172

Sobieski, Wisconsin 54171

Counties:

County of Manitowoc
Manitowoc, Wisconsin 54220

Hospitals:

Northview Home
25042 W. Northview Rd.
Waukesha, Wisconsin 53186

Institutions of Higher Education:

Fox Valley Technical Institute
1825 N. Bluemound Drive
Appleton, Wisconsin 54911

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: MASTER KEY ANTITRUST LITIGATION	M.D.L. DOCKET NO. 45
CITY OF PHILADELPHIA, Plaintiff, v. EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY, and ILCO CORPORATION, Defendants.	CIVIL ACTION NO. 14,233

REQUESTS FOR EXCLUSION

STATE OF ALABAMA:

Covington County Schools
P. O. Box 938
Andalusia, Alabama 36420

Pickens County Board of Education
P. O. Box 32
Carrollton, Alabama 35447

Phenix City Public Schools
P. O. Box 460
Phenix City, Alabama 36867

Druid City Hospital
Tuscaloosa, Alabama 35401

STATE OF ARKANSAS

Arkansas Department of Parks
& Tourism
Parks Division
1612 Maryland
Little Rock, Arkansas 72202

STATE OF DELAWARE:

Seaford School District
Seaford, Delaware 19973

City of Dover
P. O. Box 475
Dover, Delaware 19901

STATE OF GEORGIA:

Effingham County Board of Education
P. O. Box 346
Springfield, Georgia 31329

Heard County Board of Education
Franklin, Georgia 30217

Lowndes County School System
P. O. Box 1227
Valdosta, Georgia 31601

Lumpkin County Schools
Dahlonega, Georgia 30533

Tattnall County Schools
Reidsville, Georgia 30453

Putnam County Board of Educatio
304 West Marion Street
Eatonton, Georgia 31024

Catoosa County, Georgia
210 Lafayette Street
Ringgold, Georgia 30736

STATE OF IDAHO:

School District Number 33
Montpelier, Idaho 83254

STATE OF IOWA:

Adel Community School District
215 North 11th Street
Adel, Iowa 50003

Central Community School Distri
Elkader, Iowa 53043

Emmetsburg Community School Dist.
16th & Grand
Emmetsburg, Iowa 50536

Creston Community School Distri
619 North Maple Street
Creston, Iowa 50801

La Porte City Community Schools
La Porte City, Iowa 50651

Fairfield Community School Dist
Box 470
Fairfield, Iowa 52556

Mediapolis Community School Dist.
Mediapolis, Iowa 52637

Nevada Community Schools
Nevada, Iowa 50201

Tipton Community Schools
Tipton, Iowa 52772

City of Ottumwa
Municipal Building
Ottumwa, Iowa 52501

COMMONWEALTH OF KENTUCKY.

Marion County Schools
Lebanon, Kentucky 40033

STATE OF LOUISIANA:

Beauregard Parish School Board
P. O. Drawer 152
DeRidder, Louisiana 70634

Evangeline Parish School Board
607 Evangeline Drive
Ville Platte, Louisiana 70586

West Feliciana Parish School Board
P. O. Drawer B
St. Francisville, Louisiana 70775

COMMONWEALTH OF MASSACHUSETTS:

City of Newton School Department
Commonwealth Avenue & Walnut Street
Newton Centre, Massachusetts 02159

West Boylston Public Schools
West Boylston, Massachusetts
01583

Berkshire Community College
West Street
Pittsfield, Massachusetts 01201

STATE OF MISSISSIPPI:

Montgomery County Board of
Education
Winona, Mississippi

Pontotoc, Mississippi Municipal
Separate School District
P. O. Box 487
Pontotoc, Mississippi 38863

City of Jackson, Mississippi
P. O. Box 17
Jackson, Mississippi

Tunica County Hospital
Tunica, Mississippi 38676

STATE OF MISSOURI:

Reorganized School Dist. No. 1
Vandalia, Missouri 63382

Branson Reorganized Schools
Branson, Missouri 65616

Northwest Missouri State Univ.
Maryville, Missouri 64468

STATE OF NEBRASKA:

Hastings Public Schools
P. O. Box 489
Hastings, Nebraska 68901

Brown County
Ainsworth, Nebraska 69210

STATE OF NEVADA:

Mt. Grant General Hospital
P. O. Box 1516
Hawthorne, Nevada 89415

STATE OF NEW HAMPSHIRE:

City of Rochester
69 South Main Street
Rochester, New Hampshire 03867

STATE OF NORTH CAROLINA:

Duplin County Public Schools
Kenansville, North Carolina 28349

City of Winston-Salem, N.C.

Avery County Courthouse
Newland, North Carolina

Cape Fear Technical Institute
411 N. Front St.
Wilmington, North Carolina 28401

Pitt Technical Institute
P. O. Drawer
Greenville, North Carolina

STATE OF NORTH DAKOTA:

Griggs County
Cooperstown, North Dakota

STATE OF TEXAS:

Brownsville Independent
School District
Brownsville, Texas 78520

Mineral Wells Independent
School District
603 South Oak
Mineral Wells, Texas 76067

Village of Edgecliff,
Tarrant County
Route 3, Box 69
Fort Worth, Texas 76134

The City of Richardson
P. O. Box 309
Richardson, Texas 75080

Bexar County Hospital Dist.
4502 Medical Dr.
San Antonio, Texas 78284

Concho County Hospital &
Nursing Home
Eden, Texas 76837

STATE OF UTAH:

City of Bountiful
745 S. Main St.
Bountiful, Utah 84010

STATE OF VIRGINIA:

Page County Public Schools
735 W. Main St.
Luray, Virginia 22835

County of Bedford
Bedford, Virginia 24523

STATE OF WASHINGTON:

Camas Public Schools
District No. 117
2028 N.E. Garfield St.
Camas, Washington 98607

Lynden Public Schools, Dist. 504
Lynden, Washington 98264

Ritzville Memorial Hospital
903 S. Adams St.
Ritzville, Washington 99169

STATE OF SOUTH DAKOTA:

Hand County
Miller, South Dakota 57362

Crane Independent School Dist.
P. O. Box 997
Crane, Texas 79731

Santa Fe Independent School Dist
P. O. Box 370
Alta Loma, Texas 77510

Seminole Public Schools
P. O. Box 877
Seminole, Texas 79360

City of Irving
Irving, Texas 75060

Mason County
Mason, Texas 76856

Brooks County Hospital
1400 S. St. Marys St.
Falfurrian, Texas 78355

Housing Authority of the
City of Texarkana
P. O. Box 5766
Texarkana, Texas 75501

Sussex County Public Schools
Sussex, Virginia 23884

City of Norfolk
908 City Hall Building
Norfolk, Virginia 23501

Centralia Public Schools, Dist 4
Centralia, Washington 98531

Educational Service Dist. 105
103 Courthouse
Yakima, Washington 98901

Stevenson-Carson Public Schools
School District 303
Stevenson, Washington 98648

Eastern Washington State Colleg
Cheney, Washington 99004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing LISTS OF CLASS MEMBERS THAT HAVE REQUESTED EXCLUSION FROM THE CLASS ACTIONS ON BEHALF OF PUBLIC ENTITIES were served upon all defense counsel, this 14th day of May, 1976.

Lisa Freeman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE:	:	
	:	M.D.L. DOCKET NO. 45
MASTER KEY ANTITRUST LITIGATION	:	
AMHERST LEASING CORPORATION, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO. 14,234
EMHART CORPORATION, EATON CORPORATION, SARGENT & COMPANY and ILCO CORPORATION,	:	
	:	
Defendants.	:	

AFFIDAVIT RE:
EXCLUSIONS FROM PRIVATE-BUILDERS' CLASS ACTION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	SS
COUNTY OF PHILADELPHIA	:	

H. LADDIE MONTAGUE, JR., being first duly sworn according to law deposes and says:

1. I am a member of David Berger, P.A., Attorneys at Law, 1622 Locust Street, counsel for class representative plaintiffs in the matter entitled Amherst Leasing Corporation v. Emhart Corp., Civ. No. 14,234 (D.Conn.) and Co-Liaison Counsel.

2. Pursuant to Notice mailed March 29, 1976, one hundred seventy-seven (177) private class members

listed on Exhibit "A" annexed hereto have in writing elected to be excluded from the above-captioned class action.

3. All letters of exclusion are presently in the custody of David Berger, P.A., Attorneys at Law, 1622 Locust Street, Philadelphia, Pennsylvania.

4. In addition to the foregoing, one class member, General Telephone Company of Wisconsin, originally requested in writing to be excluded from this class and subsequently orally requested that the exclusion be withdrawn and that it be included in the class. General Telephone Company of Wisconsin stated that it would follow up its oral request with a request in writing. As of the date of this Affidavit no written request to withdraw its exclusion has been received by Affiant.

H. LADDIE MONTAGUE, JR.

Dated: May 14, 1976.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 14th day
OF MAY, 1976.

Notary Public

MASTER KEY ANTITRUST LITIGATION

Requests For Exclusion

AGWAY INC.
David M. Hayes
Assistant General Counsel
Box 1333
Syracuse, New York 13201

ADA MOTEL DEVELOPMENT
d/b/a Holiday Inn of Ada
Arthur L. Qulby
400 NE Richardson Loop
Ada, Oklahoma 74820

ALEXANDER & ALEXANDER, INC.
Ronald J. Roessler
Vice President & General Counsel
Hampton Plaza
300 East Joppa Road
Baltimore, Maryland 21204

AMERICAN NATIONAL BANK AND TRUST COMPANY
D. E. Lowery
Senior Vice President
Chattanooga, Tennessee 37401

THE ATLANTA JOURNAL
THE ATLANTA CONSTITUTION
John D. Horton
Box 4689
Atlanta, GA 30302

ALBANY HYATT HOUSE
Jack Wilson, General Manager
1375 Washington Avenue
Albany, New York 12205

AMERICAN MUTUAL LIFE INSURANCE COMPANY OF DES MOINES
Richard W. Lozier, Jr., Esquire
Grant, Lozier & Sarcone
902 Liberty Building
Des Moines, Iowa 50309

THE ARMORY REALTY COMPANY
Miss Margo Neuhauser, Sec.
1301 Arapahoe Street
Golden, Colorado 80401

480

EXHIBIT A

THE AMERICAN NATIONAL BANK
AND TRUST COMPANY OF CHICAGO
Robert J. Lara
Second Vice President
33 North LaSalle Street
Chicago, Illinois 60690

BANK OF WOODSTOCK
Smith L. Johnston
President
Post Office Box 538
Woodstock, Georgia 30188

BARNHART'S MOTEL
3021 East Market Street
Lincoln Highway East
York, Pennsylvania 17402

BIRMINGHAM TRUST NATIONAL BANK
H. J. Welch
Vice President
Birmingham, Alabama

BONIDE CHEMICAL COMPANY INC.
James H. Wurz, Jr.
Secretary
Yorkville, NY 13495

BOY SCOUTS OF AMERICA
David K. Park
National Legal Counsel
North Brunswick, NJ 08902

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASS'N
CONTINENTAL SERVICE COMPANY
Theodore Sachsman, Esquire
Bank of America Center
Box 37000
San Francisco, CA 94137

BUFFALO SAVINGS BANK
Donald L. Champagne, Sec.
545 Main Street
Buffalo, NY 14203

B.P.BARBER & ASSOCIATES, INC.
Harold S. Wrenn, President
P. O. Box 1116
1516 Calhoun Street
Columbia, South Carolina 29202

CENTRAL STATE BANK
L. L. Marsh
Senior Vice President
Connersville, Indiana 47331

CLEARVIEW VETERANS, INC.
Horace V. Richards
President
National Bank of Commerce Building
New Orleans, LA 70112

COLONA AVENUE STATE BANK
Jay Van Paemel
President
Colona Avenue and Seventh Street
East Moline, Illinois 61244

COMMERCIAL AND INDUSTRIAL BANK
Daniel D. Canale, Esquire
1905 Sterick Building
Memphis, Tennessee 38103

COUSINS PROPERTIES, INC.
Terry R. Elliott
Vice President
Project Director
300 Interstate North
Atlanta, Georgia 30339

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
Michael W. Payette, Esquire
400 West Madison Street
Chicago, IL 60606

THE CITIZENS NATIONAL BANK
A. L. Smith, III, President
Hillsboro, Texas 76645

CITY OF LANCASTER
Gary Burton, Clerk
Lancaster, Minnesota

AL COHEN CONSTRUCTION COMPANY
William A. Johnson, Controller
2505 18th St./Box 11427
Denver, Colorado 80211

COLUMBUS MCKINNON CORPORATION
HOIST DIVISION
Damascus, Virginia 24236

COOL RAY, INC.
SUBSIDIARY OF WARNER-LAMBERT CO.
Neil D. Edwards, Esquire
Consumer Products Group
Morris Plains, New Jersey 07950

THE COSMOPOLITAN
Daryl Francis, Controller
(no address)

COLUMBIA SAVINGS AND LOAN ASSOC.
C. J. Hafertepen,
Vice President and General Counsel
16th at Broadway
Denver, Colorado 80202

CONTINENTAL SERVICE COMPANY
Theodore Sachsman, Esquire
Bank of American Center
Box 37000
San Francisco, CA 94137

COMMUNITY PUBLIC SERVICE COMPANY
F.G. Von Huben, Vice President,
Secretary and General Counsel
501 West 6th Street
Fort Worth, Texas 76102

DALLAS FEDERAL SAVINGS
William E. Livingstone, III
Executive Vice President and General Counsel
Corporate Headquarters
8333 Douglas
Dallas, Texas 75225

DANIEL INTERNATIONAL CORPORATION
Bryan F. Hickey
Assistant General Counsel
Daniel Building
Greenville, South Carolina 29602

DETROIT BANK & TRUST
Thomas C. Tisler
Operations Officer
Detroit, Michigan 48231

DUNCAN CO.
Rusty Duncan, Treasurer
425 Hoover St. N.E.
Minnespolis, Minn. 55413

DUKE POWER COMPANY
Steve C. Griffith, Jr., Esquire
P. O. Box 2178
Charlotte, NC 28242

ELLISCO INC.
MYERS DIVISION
J. M. Flynn
General Manager
6850 River Road
Pennsauken, New Jersey 08110

EASTEX PACKAGING
Gex P. Condit, Pres.
P. O. Box 816
Silsbee, Texas 77656
THE EVENING AND SUNDAY BULLETIN
Joseph M. Banford
Manager of Procurement, Bldg. & Safety
30th and Market Streets
Philadelphia, PA 19101

ELWOOD FEDERAL SAVINGS AND LOAN ASSOCIATION
Charles R. Mayfield
Executive Vice President
Elwood, Indiana 46036

THE EL PASO COMPANY
EL PASO DEVELOPMENT COMPANY
EL PASO MINING AND MILLING COMPANY
EL PASO NATURAL GAS COMPANY
EL PASO NATURAL GAS BUILDING COMPANY
P. O. Box 1492
El Paso, TX 79978

EL PASO LNG COMPANY
EL PASO ALGERIA CORPORATION
EL PASO ARZEW TANKER COMPANY
EL PASO COLUMBIA TANKER COMPANY
EL PASO COVE POINT TANKER COMPANY
EL PASO GAMMA TANKER COMPANY
EL PASO SAVANNAH TANKER COMPANY
EL PASO SOUTHERN TANKER COMPANY
2727 Allen Parkway
P. O. Box 1440
Houston, Texas 77001

EDISON BUILDING
MANAGED BY 72 West Adams Company
George Matsinger
Building Manager
72 West Adams Street
Chicago, IL 60603

EL PASO PRODUCTS COMPANY
John B. Mason, Senior Vice President
and General Counsel
Post Office Box 3986
Odessa, Texas 79760

FIRST & MERCHANTS PROPERTIES, INC.
FIRST & MERCHANTS CORPORATION
FIRST & MERCHANTS NATIONAL BANK
David L. Norton, Secretary
F & M Center
12th & Main Streets
Richmond, Virginia 23261

FARM CREDIT
H. Richard Zook
General Manager, FLBA
3301 West Market Street
York, Pennsylvania 17405

FIRST FEDERAL OF LARGO
Ms. Patricia Jowers
Senior Vice President
100 Clearwater-Largo Road
P. O. Box 1960
Largo, Florida 33540

FLAME SPRAY, INC.
L. D. Erb
1900 West 12th Avenue
Denver, Colorado 80204

FLOYD PHYSICIANS CORPORATION
G. Kenneth Hay
Attorney At Law
525 American Bank Building
New Albany, Indiana 47150

FAIRVIEW HOSPITAL AND TRAINING CENTER
Mental Health Division
Department of Human Resources
Larry W. Talkington, Ph. D.
2250 Strong Road S.E.
Salem, Oregon 97310

FIRST NATIONAL BANK
Hatton McMahan, Pres.
Box 637
Altus, Oklahoma 73521

FIRST NATIONAL BANK OF NORMAL,
NORMAL, ILLINOIS
Robert T. Fleming, Esquire
Fleming, Messman, Lapan & O'Connor
217 East Washington Street
P.O. Box 3277
Bloomington, Illinois 61701

FADLER COMPANY, INC.
FADLER PRODUCE COMPANY
C. Curtis Watkins, President
6511 East Forty-Fourth
Tulsa, Oklahoma 74145

FARM CREDIT BANKS OF SPRINGFIELD
FEDERAL LAND BANK
FEDERAL INTERMEDIATE CREDIT BANK
BANK FOR COOPERATIVES
Charles R. McGinnis
Assistant Vice President
P.O. Box 141
Springfield, MA 01101

FIRST NATIONAL BANK OF LAWRENCE
900 Massachusetts Street
Lawrence, Kansas
by: William A. Hall
Hallmark Cards Inc
Kansas City, MO 64141

THE FEDERAL LAND BANK OF LOUISVILLE
Charles L. Hardin, General Counsel
and Secretary
P.O. Box 239
Louisville, Kentucky 40201

G. S. PRECISION INC.
Richard U. Kaufmann
Office Manager
West Route 9
Wilmington, Vermont 05363

GREAT BARRINGTON SAVINGS BANK
Frank T. Biscotti
Assistant Vice President
Great Barrington, Massachusetts 01230

GALPUR
L. E. Purvis, Pres.
Research Park
Princeton, NJ 08540

GENERAL ELECTRIC COMPANY
TIP Computer and Communications
R. A. Fazzone, Esquire
2500 Cambridge Road
Schenectady, NY 12304

GENERAL SPECIALTIES COMPANY, INC.
Edwin H. Smith, President
Post Office Box 1113
239 Iverson Way
Charlotte, North Carolina 28201

WILLIAM A. HAYNE
Rm. 400 - 278 Post Street
San Francisco, California 94108

HIGHLAND TELEPHONE
John H. Cline
Vice President and General Manager
145 North Main Street
Monroe, New York 10950

HILLCREST
Joseph F. Gandol
Executive Vice President
1101 Hillcrest Drive
Hollywood, Florida 33021

HOLIDAY INN OF ST. AUGUSTINE
H. Clinton Sams, Innkeeper
1300 Ponce De Leon Boulevard
St. Augustine, Florida 32084

HOLIDAY INN OF WABASH
Elburn D. Robinson, President
1950 Wabash
Wabash, Indiana 46992

HOLIDAY INN OF WILLIAMSPORT
Gilbert N. Venner, Innkeeper
East Third Street
Williamsport, Pennsylvania 17701

HOOSIER GAS CORPORATION
H. W. Rutledge, President
609 Busseron Street
Vincennes, Indiana 47591

HORMEL EMPLOYEES CREDIT UNION
Arthur E. Peck, Treas.
711 Fourth Avenue N.E.
Austin, Minnesota 55912

HOUSTON ENDOWMENT INC.
J. H. Creekmore
P. O. Box 52338
Houston, Texas 77052

H. F. LENZ CO.
Warren L. Custer, P.E.
Lyter Drive
Johnstown, PA 15905

THE HAHNEMANN MEDICAL COLLEG
& HOSPITAL OF PHILA.
J. E. Berner, Director
Two-Thirty North Broad St.
Phila., PA 19102

HOLIDAY INN OF ADA
Arthur L. Qulby
400 NE Richardson Loop
Ada, OK 74820

HUGHES AIRCRAFT COMPANY
D.H. White, Vice President-
Controller
Culver City, CA 90230

I & M INDUSTRIALS, INC.
E. R. Bridges, Treasurer
Akron Drive
Donaldson Center
P. O. Box 8775, Station A
Greenville, South Carolina 29604

IMPERIAL TOBACCO LIMITED
R. L. Owen
Vice President
Engineering Services
Post Office Box 1848
Wilson, North Carolina 27893

ICI UNITED STATES INC.
Atlas Aerospace Division
D. K. Shine
Director of Aerospace
Valley Forge Corporate Center
P. O. Box 819
Valley Forge, PA 19482

INTERNATIONAL PAPER COMPANY
H. D. King, Plant Controller
Post Office Box 34100
Dallas, TX 75234

INTERNATIONAL STATE BANK
Arnold M. Johnson, President
P.O. Box 511
International Falls, Minnesota 56649

J I CASE
Carl E. Whitman, Esquire
700 State Street
Racine, Wisconsin 53404

KALMUS AND ASSOCIATES, INC.
W. W. Woke, Secretary
2424 South 25th Avenue
Broadview, Illinois 60153

KACHINA LODGE AND MOTEL
Jonathan Admire, General Manager
North Pueblo Road
Taos, New Mexico 87571

LEDEX INC.
Gerald Leland, President
123 Webster Street
Dayton, Ohio 45401

LEY CONSTRUCTION COMPANY
Robert A. Conway
Vice President
103 Phoenix Avenue
Enfield, Connecticut 06082

LIBERTY NATIONAL LIFE INSURANCE COMPANY
Ira L. Burleson
Senior Vice President and General Counsel
P. O. Box 2612
Birmington, Alabama 35202

THE LITTLETON SAVINGS BANK
Gilbert P. Pike
Executive Vice President
Littleton, New Hampshire 03561

LUBRICATION ENGINEERS, INC.
Robert E. Hardwicke, Jr., Esquire
Pope, Hardwicke, Christie, Montgomery & Rehfeldt
Fort Worth Club Building
Fort Worth, Texas 76102

LAYSTROM-BUESCHER, INC.
Art Laystrom, Sr., President
505 Harvester Ct. E
Wheeling, IL 60090

LEE COUNTY BANK
John D. Stortz,
Senior Vice President & Cashier
Post Office Box 711
Fort Myers, Florida 33902

LEE GAY, INC.
d/b/a Holiday Inn of Wabash
1950 Wabash
Wabash, IN 46992

LINCOLN COUNTY LIFE
John D. Hughes, Vice President
711 Polk
Houston, Texas 77002

LOON MOUNTAIN RECREATION CORPORATION
Sherman Adams
Lincoln, New Hampshire 03251

THE MARRITIME CORPORATION
H. H. Hotson, President
911 Western Avenue
Seattle, 4, Washington

MERCHANTS AND BUSINESS MEN'S MUTUAL INSURANCE COMPANY
William W. Dodson, Jr., Vice President
2201 North Front Street
P. O. Box 1633
Harrisburg, Pennsylvania 17105

THE MOTCH & MERRYWEATHER MACHINERY CO.
Louis Reiss, Vice President - Finance
1250 E. 222nd Street
Cleveland, Ohio 44117

MEYER, STRONG & JONES, P.C.
Mr. Walter D. Zinke
230 Park Avenue
New York, NY 10017

MEMORIAL HOSPITAL
Tom Faulkner, Administrator
Sunset Avenue at Claflin Rd.
Manhattan, Kansas 66502

THE MARQUETTE HOTEL
Cape Girardeau, MO

MC QUAY GROUP
MC QUAY-PERFEX, INC.
Rene O. Thune, Vice President - Manufacturing
13600 Industrial Park Boulevard
P. O. Box 1551
Minneapolis, Minnesota 55440

MERCHANTS NATIONAL BANK & TRUST COMPANY OF INDIANAPOLIS
Benton R. Millis, Esquire
Assistant General Counsel
Indianapolis, IN 46204

MERCHANTS NATIONAL CORPORATION
Benton R. Millis, Esquire
Assistant General Counsel
Indianapolis, IN 46204

MURPHY BENHAM HARDWARE, INC.
John C. French, Chairman, C.M.H.A.
66 North South Street
Wilmington, Ohio 45177

MURILLA APARTMENTS
533 W. 14th Street
Des Moines, Iowa 50309

MEDICAL TOWERS BUILDING
Horizontal Property Regime
Phyllis Laser, Building Manager
Barnes Quinn Flake & Anderson, Inc.
2100 First National Building
P.O. Box 3546
Little Rock, Arkansas 72203

MARRIOTT CORPORATION
Craig D. Katz, Esquire
5161 River Road
Washington, DC 20016

NATIONAL CITY BANK OF ROME
Donald G. Trammell
Vice President and Cashier
P. O. Box 1193
Rome, Georgia 30161

NATIONAL SAVINGS AND TRUST COMPANY
Robert E. Kendrick, Jr.
Vice President
Washington, DC 20005

NORTH FEDERAL SAVINGS AND LOAN ASSOICATION
Robert H. Rusher, Senior Vice President
100 West North Avenue at Clark
Chicago, IL 60610

NORTH RIVER TELEPHONE COOPERATIVE, INC.
W. R. Fleming, Manager
Dayton, VA 22821

NCR Corporation
Los Angeles District
T.M Childress
District Administrative Mgr.
1940 Century Park East
Los Angeles, CA 90067

THE ONE MAINE SAVINGS BANK
Thomas R. Swan
Vice President, Secretary and Clerk
One Maine Savings Plaza
Portland, Maine 04104

OAK CLIFF BANK & TRUST COMPANY
Harry A. DeFord, II, Esquire
Zang & 12th
Dallas, Texas 75208

OKLAHOMA NATURAL GAS COMPANY
John M. Sharp, Esquire
Huffman, Arrington, Scheurich & Kihle
Fifth Floor, Oklahoma Natural Building
Tulsa, Oklahoma 74119

PLOUGH, INC.
Max L. Ostrow, Esquire
P. O. Box 377
Memphis, Tennessee 38151

PIEDMONT MANUFACTURING COMPANY
David Torrance, Purchasing Agent
P.O. Box 648
Altavista, VA 24517

PLEASANTS HARDWARE
James T. Hatcher, Jr., Partner
2024 W. Broad Street
P.O. Box 8007
Richmond, VA 23220

QUINCY SOYBEAN COMPANY
Paul D. Otto, Treasurer
1900 South Front Street
Quincy, Illinois 62301

RESERVE SUPPLY COMPANY
Robert J. Wanzong
Director of Purchasing
5110 Main Street, N.E.
P. O. Box 1372
Minneapolis, Minn. 55440

ROBINAIR MANUFACTURING
KENT-MOORE
H. A. Tubbs, President
Montpelier, Ohio 43543

SAVINGS BANK OF DANBURY
Florence R. Helley
Vice President
Danbury, Connecticut 06810

THE SEEING EYE, INC.
Stuart Grout
Morristown, New Jersey 07960

SPENCE ENGINEERING COMPANY, INC.
W. T. Johnson, Secretary
150 Coldenham Road
Walden, New York 12586

STALEY EMPLOYEES CREDIT UNION
C. Dean DeVore
Treasurer/Manager
440 North 22nd Street
Decatur, Illinois 62521

STUTSMAN COUNTY STATE BANK
W. E. Summers, President
Jamestown, North Dakota 58401

STATE FARM INSURANCE COMPANIES
Lawrence J. Nelson, Esquire
One State Farm Plaza
Bloomington, IL 61701

ST. REGIS PAPER COMPANY
Joseph E. Gore, Assistant Secretary and
Corporate Counsel
150 East 42nd Street
New York, NY 10017

ROBERT F. SCHWANER
Hibernia Bank Building
(no address)

THE SECOND NATIONAL BANK OF RICHMOND
Robert J. Kutter, Vice President & Cashier
Richmond, Indiana 47374

THE SHAW-WALKER CO.
Attn: Secretary
Muskegon, Michigan 49443
Owner: 309 West Washington Street
Chicago, IL

SKELLY OIL COMPANY
Neal F. Lehman, Esquire
Law Department
P. O. Box 1650
Tulsa, Oklahoma 74102

SUN OIL COMPANY (Delaware)
SUN OIL COMPANY (New Jersey)
Rufus N. McKnight, Jr., Esquire
Sun Oil Company
Office of the General Counsel
12850 Hillcrest Road
Dallas, Texas 75230

SALEM STEEL COMPANY OF WINSTON-SALEM
Division of Carolina Steel Corporation
Daniel W. Fouts, Esquire
Adams, Kleemeier, Hagan, Hannah & Fouts
Suite 600 Jefferson Standard Building
Greensboro, NC

SAN DIEGO FEDERAL SAVINGS & LOAN ASSOCIATION
D. R. McArthur, Vice President
600 B Street
San Diego, California 92183

SHELL OIL COMPANY
Linda S. Freeman, Esquire
One Shell Plaza - P.O. Box 2463
Houston, Texas

SOUTH CENTRAL BELL TELEPHONE COMPANY
Paul L. Coutler, Esquire
P.O. Box 771
Birmingham, Alabama 35201

TAMPA FEDERAL SAVINGS & LOAN ASSOCIATION
J. R. Vincent, Vice President
P. O. Box 2231
Tampa, Florida 33601

THOMASTON SAVINGS BANK
Foster A. Snyder
Sr. Vice President and Secretary
Thomaston Connecticut

TRANSOUTH FINANCIAL COPPORATION
J. F. Lyles
Senior Vice President
518 South Irby Street
P. O. Box 471
Florence, SC 29501

TRINITY TOWERS
Richard T. Hunter
537 South Third Street
Louisville, Kentucky 40202

TROPICANA PRODUCTS, INC.
Robert E. Christopher
Administrative Assistant to the President
Bradenton, Florida 33505

TRUMBULL PARK BUSINESS CENTER
Alexander Aiello
945 White Plains Road
Trumbull, Connecticut 06611

TEXAS POWER & LIGHT COMPANY
R. O. Pewitt
1511 Bryan Street
P. O. Box 6331
Dallas, Texas 75222

DR. L. L. THEBERGE
808 Mount Rushmore
Rapid City, S.D. 57701

UNIONMUTUAL LIFE INSURANCE COMPANY
James F. Keenan, Counsel
Portland, Maine 04112

UNITED VIRGINIA BANK
Lee W. DeBerry, Jr.
Cashier
Box 201
Lynchburg, Virginia 24505

UNITED TECHNOLOGIES CORPORATION
T. D. Chambers
Deputy General Counsel
United Technologies Building
Hartford, Connecticut 06101

UNITED TECHNOLOGIES CORPORATION
Ingraham Building
New Britain Avenue
Farmington, CT

VOLUNTEER STATE LIFE INSURANCE COMPANY
E. F. C. Petering
Building Manager
P. O. Box 1369
Chattanooga, Tennessee 37401

VIRGINIA NATIONAL BANK/HENRY COUNTY
Franklin P. Earley
Vice President & Cashier
P. O. Box 5228
Martinsville, Virginia 24112

WHITEHEAD BROTHERS COMPANY
Bruce E. Peterson, Treasurer
60 Hanover Road
Florham Park, New Jersey 07932

C. W. WHITTIER & BROTHER
Daniel I. Ward
111 Devonshire Street
Boston, Massachusetts 02109

WOODMEN ACCIDENT AND LIFE COMPANY
E. J. Faulkner, President
Lincoln, Nebraska 68501

WORCESTER CONTROLS CORPORATION
Lester W. Buffinton
Vice President and Treasurer
125 Hartwell Street
West Boylston, Massachusetts 01583

WARNER-LAMBERT COMPANY
Neil D. Edwards, Esquire
Consumer Products Group
Morris Plains, NJ 07950

WESTERN ELEVATOR CORPORATION
Charles Alexander
2920 N. E. Blakely Street
Seattle, Washington 98105

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO
James A. Rowe, Corporate Counsel
P. O. Box 5068
Clearwater, FL 33518

WARNER PROFESSIONAL BUILDING
Frank Warner
(no address)

MASTER KEY CLASS ACTION NOTICE RESPONSES

Requests for Exclusion

State-wide Governmental Class:

COLORADO	10
FLORIDA	8
ILLINOIS	40
INDIANA	14
MICHIGAN	34
MINNESOTA	74
PENNSYLVANIA	17
WEST VIRGINIA	3
WISCONSIN	18
	218

National Governmental Class:

ALABAMA	4
ALASKA	0
ARKANSAS	1
DELAWARE	2
GEORGIA	7
HAWAII	0
IDAHO	1
IOWA	10

KENTUCKY	1
LOUISIANA	3
MAINE	0
MARYLAND	0
MASSACHUSETTS	3
MISSISSIPPI	4
MISSOURI	3
MONTANA	0
NEBRASKA	2
NEVADA	1
NEW HAMPSHIRE	1
NEW MEXICO	0
NORTH CAROLINA	5
NORTH DAKOTA	1
OKLAHOMA	0
OREGON	0
RHODE ISLAND	0
SOUTH CAROLINA	0
SOUTH DAKOTA	1
TENNESSEE	0
TEXAS	13
UTAH	1
VERMONT	0

VIRGINIA	4
WASHINGTON	7
WYOMING	0
	75